2-11-92
Vol. 57 No. 28

federal register

Tuesday
February 11, 1992

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

2-11-92
Vol. 57 No. 28
Pages 4925-5050

federal register

Tuesday
February 11, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 57 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–2235
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–2235
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	512–2235
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southeast corner of 11th and L Streets

Contents

Federal Register

Vol. 57, No. 28

Tuesday, February 11, 1992

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Bovine Blood Typing Laboratory, 4944

Agriculture Department
See Agricultural Research Service; Soil Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 4994

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
Alexander Valley, CA; withdrawn, 4942

Children and Families Administration
PROPOSED RULES
Public assistance programs:
Aid to families with dependent children (AFDC)—
Coverage, eligibility and administration; financial assistance to individuals; correction, 5048

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Georgia, 4946

Commerce Department
See Export Administration Bureau; International Trade Administration; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Financial Instrument Exchange—
Extended trading hours, 4993

Comptroller of the Currency
NOTICES
Highly-leveraged transactions; supervisory definition, 5040

Copyright Royalty Tribunal
NOTICES
Meetings; Sunshine Act, 5046

Customs Service
RULES
Vessels in foreign and domestic trades:
Reciprocal privileges—
Argentina, 4936

Defense Department
See Air Force Department; Navy Department

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
College library technology and cooperation program—
Biotechnology education information demonstration project, 4994

Energy Department
See also Energy Research Office; Federal Energy Regulatory Commission
NOTICES
Meetings:
International Energy Agency Industry Advisory Board, 4994

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research program—
Energy-related science and engineering graduate traineeships, 4998

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Modarressi, Majid, 4946
Foreign availability assessments:
High precision bearings, 4947
Hydroxyl terminated polybutadiene resins, 4948

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 4925
NOTICES
Exemption petitions; summary and disposition, 5036

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 5046

Federal Deposit Insurance Corporation
NOTICES
Highly-leveraged transactions; supervisory definition, 5040

Federal Energy Regulatory Commission
NOTICES
Natural gas companies (Natural Gas Act):
Natural gas data collection system—
PC print software for report of gas supply and requirements (FERC Form No.2–A), 4995
Oil pipeline tariff filings; pre-granted special permission, 4996
Applications, hearings, determinations, etc.:
Natural Gas Pipeline Co. of America, 4997
Texas Eastern Transmission Corp., 4998

Federal Financial Institutions Examination Council
NOTICES
Bank condition and income reports (call reports); one-to-four family residential mortgages definition; correction, 5048

Federal Highway Administration
PROPOSED RULES
Engineering and traffic operations:
Highway design standards—
Roadside barriers and safety appurtenances for vans, mini-vans, pickup trucks, and 4-wheel drive vehicles, 4941

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Community support review; members selected, 4999

Federal Maritime Commission
NOTICES
Agreements filed, etc., 5003

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 5046

Federal Procurement Policy Office
NOTICES
Federal construction contracts; letters of credit; policy letter; correction, 5048

Federal Reserve System
NOTICES
Highly-leveraged transactions; supervisory definition, 5040
Applications, hearings, determinations, etc.:
Grayson Bankshares, Inc., et al., 5004

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 5046

Federal Trade Commission
RULES
Fair Credit Reporting Act; general policy statement or interpretation; official commentary, 4935
NOTICES
Premerger notification waiting periods; early terminations, 5004

Fish and Wildlife Service
NOTICES
Marine mammal permit applications, 5009

Food and Drug Administration
PROPOSED RULES
New animal drug regulations; marketing; correction, 5048
NOTICES
Biological product licenses:
Research Procurement Co., 5005
Food additive petitions:
Ciba-Geigy Corp., 5005
Kelko, 5006
Human drugs:
New drug applications—
Superpharm Corp. et al.; approval withdrawn; correction, 5048
Priority enforcement strategy for problem importers; regulatory procedures manual, Chapter 9-87; availability, 5006

General Services Administration
RULES
Acquisition regulations:
Leasehold interests in real property, 4939

Health and Human Services Department
See Children and Families Administration; Food and Drug Administration; Health Care Financing Administration

Health Care Financing Administration
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Pennsylvania, 5006

Interior Department
See Fish and Wildlife Service; Land Management Bureau

Internal Revenue Service
RULES
Procedure and administration:
Tax collection after assessment and commencement of judicial proceedings; statute of limitations, 4937
PROPOSED RULES
Incomes taxes:
Policy acquisition expenses; capitalization; correction, 4942

International Trade Administration
NOTICES
Antidumping:
Small business telephone systems and subassemblies from Japan, 4949
Tapered roller bearings and parts, finished and unfinished, from Japan, 4951
Tapered roller bearings, finished and unfinished, and parts, from Japan, 4960
Tapered roller bearings, four inches or less in outside diameter, and components, from Japan, 4975
Countervailing duties:
Antifriction bearings (other than tapered roller bearings) and parts from Singapore, 4987
Softwood lumber products from Canada, 4989

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Buffalo Creek Railroad Co., 5009
Butte/Anaconda Historic Park & Railroad Corp., 5010

Justice Assistance Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Discretionary programs (1992 FY), 5010

Justice Department
See Justice Assistance Bureau

Labor Department
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Meetings:
Safford District Grazing Advisory Board, 5009

Management and Budget Office
See Federal Procurement Policy Office

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commissior

National Aeronautics and Space Administration
RULES
Privacy Act; implementation, 4928
Security programs; arrest authority and use of force by NASA security force personnel, 4926

National Credit Union Administration
NOTICES
Agency information collection activities under OMB review, 5022

National Institute of Standards and Technology
NOTICES
National Fire Codes:
Fire safety standards, 4992
Technical committee reports, 4991

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 4939
NOTICES
Fishery management councils; hearings:
South Atlantic—
Shrimp, 4989
Permits:
Foreign fishing, 4989
Marine mammals, 4990

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 5047

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Boise, 4938

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 5047
Memorandums of understanding:
Michigan State Police Department; NRC emergency response data system utilization, 5022
Applications, hearings, determinations, etc.:
Duke Power Co. et al., 5025
Georgia Power Co. et al., 5026
Washington Public Power Supply System, 5028

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; class exemptions:
Individual life insurance and annuity contracts transfer to employee benefit plans, 5021, 5022
Employee benefit plans; prohibited transaction exemptions:
Amgen Retirement and Savings Plan et al., 5011
FDC Profit Sharing Trust et al., 5018
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 5019

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Valuation of plan benefits—
Interest rates and factors; correction, 5048

Public Health Service
See Food and Drug Administration

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 5038, 5039

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 5030
Applications, hearings, determinations, etc.:
Hutton California Municipal Fund Inc., 5031
Hutton New York Municipal Fund Inc., 5032
Olympus Funds Trust, 5033
Shearson FMA Cash Fund, 5033
Shearson FMA Government Fund, 5034
Shearson FMA Municipal Fund, 5035
Vanguard Adjustable Rate Preferred Stock Fund, 5035

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Ararat River Watershed, NC and VA, 4944
Lower North River Watershed, VA, 4945

Trade Representative, Office of United States
NOTICES
Thailand:
Pharmaceutical products, patent protection; acts, policies, and practices, 5029

Transportation Department
See Federal Aviation Administration; Federal Highway Administration; Research and Special Programs Administration

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Comptroller of the Currency; Customs Service; Internal Revenue Service
NOTICES
Senior Executive Service:
Combined Performance Review Board; membership, 5045

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
39 4925
1203b 4926
1212 4928

16 CFR
600 4935

19 CFR
10 4936

21 CFR
Proposed Rules:
10 5048
12 5048
16 5048
20 5048
500 5048
510 5048
511 5048
514 5048

23 CFR
Proposed Rules:
625 4941

26 CFR
301 4937
Proposed Rules:
1 4942

27 CFR
Proposed Rules:
9 4942

29 CFR
2619 5048

32 CFR
706 4938

45 CFR
235 5048

48 CFR
570 4939

50 CFR
672 4939

Rules and Regulations

Federal Register
Vol. 57, No. 28
Tuesday, February 11, 1992

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-16-AD; Amendment 39-8178; AD 92-04-07]

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing 737-300, -400, and -500 series airplanes. This action requires repetitive visual inspections of wire bundles located above the cockpit-to-cabin door header frame for damage due to chafing or interference against the door header frame, and repair and rework, if necessary. This amendment is prompted by a report of burned wire bundles caused by short circuits resulting from chafed wiring. The actions specified in this AD are intended to prevent fire and smoke in the passenger cabin and cockpit.

DATES: Effective February 21, 1992.

Comments for inclusion in the Rules Docket must be received on or before April 13, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-16-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: The FAA has recently received a report of an electrical wiring short circuit and subsequent fire in the forward cabin ceiling area above the cockpit-to-cabin door in a Model 737-300 airplane. Investigation has revealed that a wire bundle containing galley power and several other systems had come into contact with the right upper corner of the cockpit-to-cabin door frame and shorted out. The burned wires were the result of electrical short circuits caused by damage to wire insulation; the insulation was damaged due to chafing of the wire bundle with the cockpit-to-cabin door header frame. This condition, if not corrected, could result in fire and smoke in the passenger cabin and cockpit.

The ceiling panel and wire bundle installation design is common on Model 737-300, -400, and -500 series airplanes. Therefore, the potentially unsafe condition could exist on any of these models.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737-300, -400, and -500 series airplanes of the same type design, this AD is being issued to prevent an electrical wiring short circuit in the forward cabin ceiling area, above the cockpit-to-cabin door, and subsequent cabin fire. This AD requires repetitive visual inspections of certain wire bundles located above the cockpit-to-cabin door header frame for damage due to chafing or interference against the door header frame, and repair and rework, if necessary. (Necessary repairs are to be accomplished in accordance with the Boeing Standard Wiring Practices Document. That document describes generalized procedures for wiring repairs on Boeing airplanes.)

This is considered interim action. The FAA may consider further rulemaking when a corrective modification is developed and approved.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-16-AD". The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major

under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures. (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-04-07. Boeing: Amendment 39-8178. Docket 92-NM-16-AD.

Applicability: All Model 737-300, 737-400, and 737-500 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the occurrence of fire and smoke in the passenger cabin and cockpit, accomplish the following:

(a) Within 20 days after the effective date of this AD, visually inspect the wire bundles above the cockpit-to-cabin door header frame for damage due to chafing or interference with the door header frame. Pay particular attention to the wire bundle crossing over the right-hand corner of the header frame. Proper inspection requires removal of the aft center ceiling panel located just forward of the cockpit-to-cabin door. Ensure that the wire bundle clamps above the cockpit-to-cabin door header frame located approximately at Station 282.5, stringers 2R and 2L, are connected securely to stringer clip standoffs. (These should not be free floating clamps.) If any damaged wire bundle or loose clamp is found, prior to further flight, repair and/or secure it, in accordance with Boeing Standard Wiring Practices Document.

(b) Repeat the inspection procedure required by paragraph (a) of this AD at intervals not to exceed 120 days.

(c) Within 30 days after the effective date of this AD, sleeve the wire bundles in the area where they cross the cockpit-to-cabin door header frame with Expando PT or equivalent protective sleeving. Ensure that there is a minimum of 0.25 inch of clearance between these bundles and the cockpit-to-cabin door frame header, to prevent chafing or interference. If rework is necessary, perform it prior to further flight, in accordance with Boeing Standard Wiring Practices Document.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle Aircraft Certification Office (ACO).

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment (39-8178), AD 92-04-07, becomes effective February 21, 1992.

Issued in Renton, Washington, on January 30, 1992.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-3170 Filed 2-10-92; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203b

RIN 2700-AA80

Security Programs; Arrest Authority and Use of Force by NASA Security Force Personnel

AGENCY: National Aeronautics and Space Administration (NASA)

ACTION: Final rule.

SUMMARY: NASA implements section 304(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2456a). By establishing guidelines for the exercise of arrest authority and for the exercise of physical force, including deadly force, in conjunction with such arrest authority.

EFFECTIVE DATE: February 11, 1992.

ADDRESSES: NASA Security Office, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Erwin V. Minter, (202) 453-2911.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1203b

Security programs, Arrest authority, Use of force.

Title 14 of the Code of Federal Regulations is amended by adding a new part 1203b to read as follows:

PART 1203b—SECURITY PROGRAMS; ARREST AUTHORITY AND USE OF FORCE BY NASA SECURITY FORCE PERSONNEL

Sec.

1203b.100 Purpose.
1203b.101 Scope.
1203b.102 Definitions.
1203b.103 Arrest authority.
1203b.104 Exercise of arrest authority—general guidelines.
1203b.105 Use of non-deadly physical force when making an arrest.
1203b.106 Use of deadly force.
1203b.107 Use of firearms.
1203b.108 Management oversight.
1203b.109 Disclaimer.

Authority: Sec. 304(f) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2456a).

§ 1203b.100 Purpose.

This regulation implements section 304(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2456a), by establishing guidelines for the exercise of arrest authority and for the exercise of physical force, including deadly force, in conjunction with such arrest authority.

§ 1203b.101 Scope.

This part applies to only those NASA and NASA contractor security force personnel who are authorized to exercise arrest authority in accordance with 42 U.S.C. 2456a and this regulation.

§ 1203b.102 Definitions.

Accredited Course of Training. A course of instruction offered by the Federal Law Enforcement Training Center, or an equivalent course of instruction offered by another Federal agency. See § 1203b.103(a)(1).

Arrest. An act, resulting in the restriction of a person's movement, other than a brief detention for purposes of questioning about a person's identity and requesting identification.

accomplished by means of force or show of authority under circumstances that would lead a reasonable person to believe that he/she was not free to leave the presence of the officer.

Contractor. NASA contractors and subcontractors at all tiers.

§ 1203b.103 Arrest authority.

(a) NASA security force personnel may exercise arrest authority, provided that:

(1) They graduate from an accredited training course (see § 1203b.102(a)); and

(2) They have been certified in writing by the Associate Administrator for Management Systems and Facilities, or designee, as specifically authorized to exercise arrest authority.

(b) The authority of NASA security force personnel to make a warrantless arrest is subject to the following conditions:

(1) The arresting officer must be guarding and protecting property owned or leased by, or under the control of, the United States under the administration and control of NASA or one of its contractors or subcontractors, at facilities owned by or contracted to NASA; and

(2) The person to be arrested has committed in the arresting officer's presence any offense against the United States; or

(3) The arresting officer has reasonable grounds to believe that the person to be arrested has committed or is committing any felony cognizable under the laws of the United States.

(c) The Office of the General Counsel, NASA Headquarters, or the Installation Chief Counsel's Office, as appropriate, shall provide guidance as to the applicability of these regulations.

§ 1203b.104 Exercise of arrest authority—general guidelines.

(a) In making an arrest, the security force officer should announce his/her authority and that the person is under arrest prior to taking the person into custody. If the circumstances are such that making such announcements would be useless or dangerous to the security force officer or others, the security force officer may dispense with these announcements.

(b) The security force officer at the time and place of arrest may search the arrested person and the area immediately surrounding the arrested person for weapons and criminal evidence. This is to protect the arresting officer and to prevent the destruction of evidence.

(c) After the arrest is effected, the arrested person shall be advised of his/her constitutional right against self-incrimination. If the circumstances are such that making such advisement is dangerous to the officer or others, this requirement may be postponed until the immediate danger has passed. However, no interrogation of the individual may occur until he/she has been properly advised of his/her right against self-incrimination.

(d) Custody of the person arrested should be transferred to other Federal law enforcement personnel (e.g., United States Marshals or FBI agents) or to local law enforcement agency personnel, as appropriate, as soon as possible, in order to ensure that the person is brought before a magistrate without unnecessary delay.

§ 1203b.105 Use of non-deadly physical force when making an arrest.

When a security force officer has the right to make an arrest, as discussed in § 1203b.103, the officer may use only that non-deadly physical force which is reasonable and necessary to apprehend and arrest the offender; to prevent the escape of the offender; or to defend himself/herself or a third person from what the security force officer reasonably believes to be the use or threat of imminent use of non-deadly physical force by the offender. Verbal abuse alone by the offender cannot be the basis under any circumstances for use of non-deadly physical force by a security force officer.

§ 1203b.106 Use of deadly force.

Deadly force shall be used only in those circumstances where the security force officer reasonably believes that either he/she or another person is in imminent danger of death or serious bodily harm.

§ 1203b.107 Use of firearms.

(a) If it becomes necessary to use a firearm in any of the circumstances described in § 1203b.106, NASA security force personnel shall comply with the following precautions whenever possible:

(1) Give an order to halt before firing.

(2) Do not fire if shots are likely to harm innocent bystanders.

(3) Aim to disable.

(b) Warning shots are not authorized.

(c) In the event that a security force officer discharges a weapon while in a duty status:

(1) The incident shall be reported by the security force officer to the NASA Security Office as expeditiously as possible, with as many details supplied as are available.

(2) The officer shall be promptly suspended from duty with pay or reassigned to other duties not involving the use of a firearm, as the Installation Director or the Associate Administrator for Management Systems and Facilities deems appropriate, pending investigation of the incident.

(3) The cognizant Installation Director, or for incidents occurring at NASA Headquarters, the Associate Administrator for Management Systems and Facilities, shall appoint an investigating officer to conduct a thorough investigation of the incident. Additional personnel may also be appointed, as needed to assist the investigating officer. Upon conclusion of the investigation, the investigating officer shall submit a written report of findings and recommendations to the appropriate Installation Director or the Associate Administrator for Management Systems and Facilities.

(4) Upon conclusion of the investigation, the Installation Director or the Associate Administrator for Management Systems and Facilities, with the advice of Counsel, shall determine the disposition appropriate to the case.

(d) Firearms will be periodically inspected and kept in good working order by a qualified gunsmith. Ammunition, holsters, and related equipment will be periodically inspected for deterioration and kept in good working order. Firearms and ammunition will be securely stored separately in locked containers. Firearms will not be stored in a loaded condition. Neither firearms nor ammunition will be stored in the same containers as money, drugs, precious materials, or classified information. NASA Headquarters and each Installation shall adopt procedures for the maintenance of records with respect to the issuance of firearms and ammunition.

§ 1203b.108 Management oversight.

(a) The Administrator shall establish a committee to exercise management oversight over the implementation of arrest authority.

(b) The Administrator shall establish a reporting requirement for Headquarters and Field Installations.

(c) The Associate Administrator for Management Systems and Facilities, or designee, will ensure that all persons who are authorized to exercise arrest authority will, before performing these duties:

(1) Receive instructions on regulations regarding the use of force, including deadly force; and

(2) Demonstrate knowledge and skill in the use of unarmed defense techniques and their assigned firearms.

(d) The Associate Administrator for Management Systems and Facilities, or designee, will also:

(1) Provide periodic refresher training to ensure continued proficiency and updated knowledge as to the use of unarmed defense techniques;

(2) Require security force officers exercising arrest authority to re-qualify annually with their assigned firearms; and

(3) Require periodic refresher training to ensure continued familiarity with regulations.

(e) The Associate Administrator for Management Systems and Facilities and Installation Directors shall issue local management instructions, subject to prior NASA Headquarters approval, which will supplement this regulation for Headquarters/Installation-specific concerns.

§ 1203b.109 Disclaimer.

These regulations are set forth solely for the purpose of internal National Aeronautics and Space Administration guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, and they do not place any limitations on otherwise lawful activities of security force personnel or the National Aeronautics and Space Administration.

Dated: February 4, 1992.

Richard H. Truly,

Administrator.

[FR Doc. 92-3157 Filed 2-10-92; 8:45 am]

BILLING CODE 7510-01-M

---

14 CFR Part 1212

RIN 2700-AB20

Privacy Act—NASA Regulations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim final rule with request for comment.

SUMMARY: NASA is revising its regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a, as amended, which currently appear at 14 CFR part 1212. These regulations establish procedures for individuals to access their Privacy Act records and to request amendment of information in records concerning them. It also provides for procedures for appeals and other remedies.

EFFECTIVE DATE: February 11, 1992. Comments must be received in writing on or before March 12, 1992.

ADDRESSES: IRM Policy and Acquisition Management Office, Code JTD-1, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Wallace O. Keene, 202/453-1775.

SUPPLEMENTARY INFORMATION: This revision changes internal Agency responsibility with regard to the handling of appeals, sets forth general housekeeping policies and procedures, and makes changes to bring NASA's regulation in line with statutory requirements.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1212

Privacy Act, Administrative practice and procedure.

For reasons set out in the Preamble, 14 CFR part 1212 is revised to read as follows:

PART 1212—PRIVACY ACT—NASA REGULATIONS

Subpart 1212.1—Basic Policy

Sec.

1212.100 Scope and purpose.
1212.101 Definitions.

Subpart 1212.2—Access to Records

1212.200 Determining existence of records subject to the Privacy Act.
1212.201 Requesting a record.
1212.202 Identification procedures.
1212.203 Disclosures.
1212.204 Fees.
1212.205 Exceptions to individuals' rights of access.

Subpart 1212.3—Amendments to Privacy Act Records

1212.300 Requesting amendment.
1212.301 Processing the request to amend.
1212.302 Granting the request to amend.

Subpart 1212.4—Appeals and Related Matters

1212.400 Appeals.
1212.401 Filing statements of dispute.
1212.402 Disclosure to third parties of disputed records.

Subpart 1212.5—Exemptions to Individuals' Rights of Access

1212.500 Exemptions under 5 U.S.C. 552a(j) and (k).
1212.501 Record systems determined to be exempt.

Subpart 1212.6—Instructions for NASA Employees

1212.600 General policy.
1212.601 Maintenance and publication requirements for systems of records.
1212.602 Requirements for collecting information.
1212.603 Mailing lists.
1212.604 Social security numbers.
1212.605 Safeguarding information in systems of records.
1212.606 Duplicate copies of records or portions of records.

Subpart 1212.7—NASA Authority and Responsibilities

1212.700 NASA employees.
1212.701 Assistant Deputy Administrator.
1212.702 Associate Administrator for Management Systems and Facilities.
1212.703 Headquarters and Field or Component Installations.
1212.704 System manager.
1212.705 Assistant Administrator for Procurement.
1212.706 Delegation of authority.

Subpart 1212.8—Failure to Comply With Requirements of This Part

1212.800 Civil remedies.
1212.801 Criminal penalties.

Authority: The National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473; the Privacy Act of 1974, as amended, 88 Stat. 1896, 5 U.S.C. 552a.

Subpart 1212.1—Basic Policy

§ 1212.100 Scope and purpose.

This part 1212 implements the Privacy Act of 1974, as amended (5 U.S.C. 552a). It establishes procedures for individuals to access their Privacy Act records and to request amendment of information in records concerning them. It also provides procedures for administrative appeals and other remedies. This part applies to systems of records located at or under the cognizance of NASA Headquarters, NASA Field Installations, and NASA Component Installations, as defined in part 1201 of this chapter.

§ 1212.101 Definitions.

For the purposes of this part, the following definitions shall apply in addition to definitions contained in the Privacy Act of 1974, as amended (5 U.S.C. 552a):

(a) The term *individual* means a living person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) The term *maintain* includes maintain, collect, use or disseminate.

(c) The term *record* means any item, collection, or grouping of information about an individual including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains a name, or the identifying

number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) The term *system of records* means a group of any records from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(e) The term *system manager* means the NASA official who is responsible for a system of records as designated in the system notice of that system of records published in the Federal Register. When a system of records includes portions located at more than one NASA Installation, the term *system manager* includes any subsystem manager designated in the system notice as being responsible for that portion of the system of records located at the respective Installation.

(f) The term *systems notice* means, with respect to a system of records the publication of information in the Federal Register upon establishment or revision of the existence and character of the system of records. The notice shall include that information as required by 5 U.S.C. 552a(e)(4).

(g) The term *routine use* means, with respect to the disclosure of a record, the use of the record for a purpose which is compatible with the purpose for which it was collected.

(h) The term *NASA employee* or *NASA official*, particularly for the purpose of § 1212.203(g) related to the disclosure of a record to those who have a need for the record in the performance of their official duties, includes employees of a NASA contractor which operates or maintains a NASA system of records for or on behalf of NASA.

(i) The term *NASA information center* refers to information centers established to facilitate public access to NASA records under part 1206 of this chapter. See § 1206.401 of this chapter for the address of each NASA information center.

Subpart 1212.2—Access to Records

§ 1212.200 Determining existence of records subject to the Privacy Act.

The procedures outlined in this subpart 1212.2 apply to the following types of requests under the Privacy Act made by individuals concerning records about themselves:

(a) To determine if information on the requester is included in a system of records;

(b) For access to a record; and

(c) For an accounting of disclosures of the individual's Privacy Act records.

§ 1212.201 Requesting a record.

(a) Individuals may request access to their Privacy Act records, either in person or in writing.

(b) Individuals may also authorize a third party to have access to their Privacy Act records. This authorization shall be in writing, signed by the individual and contain the individual's address as well as the name and address of the representative being authorized access. The identities of both the subject individual and the representative must be verified in accordance with the procedures set forth in § 1212.202 of this part.

(c)(1) Requests must be directed to the appropriate system manager, or, if unknown, to the NASA Headquarters or Field Installation Information Center. The request should be identified clearly on the envelope and on the letter as a "Request Under the Privacy Act."

(2) Where possible, requests should contain the following information to ensure timely processing:

(i) Name and address of subject.

(ii) Identity of the system of records.

(iii) Nature of the request.

(iv) Identifying information specified in the applicable system notice to assist in identifying the request, such as location of the record, if known, full name, birth date, etc.

(d) NASA has no obligation to comply with a nonspecific request for access to information concerning an individual, e.g., a request to provide copies of "all information contained in your files concerning me," although a good faith effort will be made to locate records if there is reason to believe NASA has records on the individual. If the request is so incomplete or incomprehensible that the requested record cannot be identified, additional information or clarification will be requested in the acknowledgement, and assistance to the individual will be offered as appropriate.

(e) If the information center receives a request for access, the Information Center will record the date of receipt and immediately forward the request to the responsible system manager for handling.

(f) Normally, the system manager shall respond to a request for access within 10 work days of receipt of the request and the access shall be provided within 30 work days of receipt.

(1) In response to a request for access, the system manager shall:

(i) Notify the requester that there is no record on the individual in the system of records and inform the requester of the procedures to follow for appeal (See § 1212.4);

(ii) Notify the requester that the record is exempt from disclosure, cite the appropriate exemption, and inform the requester of the procedures to follow for appeal (See § 1212.4);

(iii) Upon request, promptly provide copies of the record, subject to the fee requirements (§ 1212.204); or

(iv) Make the individual's record available for personal inspection in the presence of a NASA representative.

(2) Unless the system manager agrees to another location, personal inspection of the record shall be at the location of the record as identified in the system notice.

(3) When an individual requests records in a system of records maintained on a third party, the request shall be processed as a Freedom of Information Act (FOIA) request under 14 CFR part 1206. If the records requested are subject to release under FOIA (5 U.S.C. 552(b)), then a Privacy Act exemption may not be invoked to deny access.

(4) When an individual requests records in a system of records maintained on the individual, the request shall be processed under this part. NASA will not rely on exemptions contained in FOIA to withhold any record which is otherwise accessible to the individual under this part.

§ 1212.202 Identification procedures.

(a) The system manager will release records to the requester or representative in person only upon production of satisfactory identification which includes the individual's name, signature, and photograph or physical description.

(b) The system manager will release copies of records by mail only when the circumstances indicate that the requester and the subject of the record are the same. The system manager may require that the requester's signature be notarized or witnessed by two individuals unrelated to the requester.

(c) Identity procedures more stringent than those required in this section may be prescribed in the system notice when the records are medical or otherwise sensitive.

§ 1212.203 Disclosures.

(a) The system manager shall keep a disclosure accounting for each disclosure to a third party of a record from a system of records. This includes records disclosed pursuant to computer matching programs (See NASA Management Instruction (NMI) 1382.18).

(b) Disclosure accountings are not required but are recommended for disclosures made:

(1) With the subject individual's consent; or

(2) In accordance with § 1212.203(g) (1) and (2), below.

(c) The disclosure accounting required by paragraph (a) of this section shall include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the recipient person or Agency.

(d) The disclosure accounting shall be retained for at least 5 years after the disclosure or for the life of the record, whichever is longer.

(e) The disclosure accounting maintained under the requirements of this section is not itself a system of records.

(f) Records in a NASA system of records may not be disclosed to third parties without the consent of the subject individual. However, in consonance with 5 U.S.C. 552a(b), disclosure may be authorized without consent, if disclosure would be:

(1) To an officer or employee of NASA who has a need for the record in the performance of official duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552) and part 1206 of this chapter;

(3) For a routine use described in the system notice for the system of records;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code;

(5) To a recipient who has provided NASA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government or for evaluation by the Archivist of the United States or the Archivist's designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to NASA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress or, to the extent the matter is within its jurisdiction, any committee or subcommittee, or any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of the Comptroller's authorized representative(s), in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

§ 1212.204 Fees.

(a) Fees will not be charged for:

(1) Search for a retrieval of the requesting individual's records;

(2) Review of the records;

(3) Making a copy of a record when it is a necessary part of the process of making the record available for review;

(4) Transportation of the record(s);

(5) Making a copy of an amended record to provide evidence of the amendment; or

(6) Copies of records if this is determined to be in the best interest of the Government.

(b) Fees for the duplication of records will be assessed in accordance with § 1206.700(a) of this chapter.

(c) Where it appears that duplication fees chargeable under this section will exceed $25, the requester shall be provided an estimate of the fees before copies are made. Where possible, the requester will be afforded the opportunity to confer with Agency personnel in a manner which will reduce the fees, yet still meet the needs of the requester.

(d) Where the anticipated fee chargeable under this section exceeds $25, an advance deposit of part or all of the anticipated fee may be required.

§ 1212.205 Exceptions to individual's rights of access.

(a) The NASA Administrator has determined that the systems of records set forth in § 1212.501 are exempt from disclosure to the extent provided therein.

(b) Medical records. Normally, an individual's medical record shall be disclosed to the individual, unless the system manages, in consultation with a medical doctor, determines that access to the record could have an adverse effect upon the individual. In this case, NASA shall allow access to the record by a medical doctor designated in writing by the requesting individual.

(c) Test and qualification materials. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process and copies of certificates of eligibles and other lists of eligibles, the disclosure of which is proscribed by 5 CFR 300.201, shall be removed from an individual's record containing such information before granting access.

(d) Information compiled for civil actions or proceedings. Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

Subpart 1212.3—Amendments to Privacy Act Records

§ 1212.300 Requesting amendment.

Individuals may request that NASA amend their records maintained in a NASA system of records. This request shall be in writing, addressed to the appropriate system manager, and shall contain the following:

(a) A notation on the envelope and on the letter that it is a "Request for Amendment of Individual Record under the Privacy Act;"

(b) The name of the system of records;

(c) Any information necessary to retrieve the record, as specified in the system notice for the system of records (See § 1212.201(c)(2));

(d) A description of that information in the record which is alleged to be inaccurate, irrelevant, untimely, or incomplete; and,

(e) Any documentary evidence or material available to support the request.

§ 1212.301 Processing the request to amend.

(a) Within 10 work days of receipt by NASA of a request to amend a record, the system manager shall provide the requester with a written determination or acknowledgement advising when action may be taken.

(b) When necessary, NASA may utilize up to 30 work days after receipt to provide the determination on a request to amend a record.

(c) If the request for amendment is denied, the determination shall explain the reasons for the denial and inform the requester of the procedures to follow for appeal (See § 1212.4)).

§ 1212.302 Granting the request to amend.

NASA shall make the requested amendment clearly on the record itself and all information deemed to be inaccurate, irrelevant, or untimely shall be deleted and destroyed. Incomplete information shall either be amended or deleted and destroyed. The individual shall then be informed in writing that the amendment has been made. If the inaccurate, irrelevant, untimely, or incomplete portion of the record has previously been disclosed, then the system manager shall notify those persons or agencies of the amended information, referencing the prior disclosures (See § 1212.402).

Subpart 1212.4—Appeals and Related Matters

§ 1212.400 Appeals.

(a) Individuals may appeal to the Assistant Deputy Administrator when they:

(1) Have requested amendment of a record and have received an adverse initial determination;

(2) Have been denied access to a record; or,

(3) Have not been granted access within 30 work days of their request.

(b) An appeal shall:

(1) Be in writing and addressed to the Assistant Deputy Administrator, NASA, Washington, DC 20546;

(2) Be identified clearly on the envelope and in the letter as an "Appeal under the Privacy Act;"

(3) Include a copy of any pertinent documents; and

(4) State the reasons for the appeal.

(c) Appeals from adverse initial determinations or denials of access must be submitted within 30 work days of the date of the requester's receipt of the initial determination. Appeals involving failure to grant access may be submitted any time after the 30 work day period has expired (See § 1212.201(f)).

(d) A final determination on an appeal shall be made within 30 work days after its receipt by the Assistant Deputy Administrator, unless, for good cause shown, the Assistant Deputy Administrator extends such 30 work day period. Prior to the expiration of the 30 work day period, the requester shall be notified of any such extension.

(e) If a denial of a request to amend a record is upheld, the final determination shall:

(1) Explain the basis for the detail;

(2) Include information as to how the requester goes about filing a statement of dispute under the procedures of § 1212.401; and,

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552a(g).

§ 1212.401 Filing statements of dispute.

(a) A statement of dispute shall:

(1) Be in writing;

(2) Set forth reasons for the individual's disagreement with NASA's refusal to amend the record;

(3) Be concise;

(4) Be addressed to the system manager; and,

(5) Be identified on the envelope and in the letter as a "Statement of Dispute under the Privacy Act."

(b) The system manager shall prepare an addendum to the statement explaining the basis for NASA's refusal to amend the disputed record. A copy of the addendum shall be provided to the individual.

(c) The system manager shall ensure that the statement of dispute and addendum are either filed with the disputed record or that a notation appears in the record clearly referencing the statement of dispute and addendum so that they may be readily retrieved.

§ 1212.402 Disclosure to third parties of disputed records.

(a) The system manager shall promptly provide persons or agencies to whom the disputed portion of a record was previously disclosed and for which an accounting of the disclosure exists under the requirements of § 1212.203 of this part, with a copy of the statement of dispute and addendum, along with a statement referencing the prior disclosure. The subject individual shall be notified as to those individuals or agencies which are provided with the statement of dispute and addendum.

(b) Any subsequent disclosure of a disputed record shall clearly note the portion of the record which is disputed and shall be accompanied by a copy of the statement of dispute and addendum.

Subpart 1212.5—Exemptions to Individuals' Rights of Access

§ 1212.500 Exemptions under 5 U.S.C. 552a(j) and (k).

(a) These provisions authorize the Administrator of NASA to exempt certain NASA Privacy Act systems of records from portions of the requirements of this regulation.

(b) The Administrator has delegated this authority to the Assistant Deputy Administrator (See § 1212.701).

(c) For those NASA systems of records that are determined to be exempt, the system notice shall describe the exemption and the reasons.

§ 1212.501 Record systems determined to be exempt.

The Administrator has determined that the following systems of records are exempt to the extent provided hereinafter.

(a) *Inspector General Investigations Case Files*—(1) *Sections of the Act from which exempted.* (i) The Inspector General Investigations Case Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following: (b) relating to conditions of disclosure; (c) (1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4) (A) through (F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e) (6), (7), (9), (10), and (11) relating to dissemination and maintenance of records, and (i) relating to criminal penalties. This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(ii) To the extent that there may exist noncriminal investigative files within this system of records, the Inspector General Investigations Case Files system of records is exempt from the following sections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to the disclosure accounting, (d) relating to access to records, (e)(1) relating to the type of information maintained in the records; (e)(4)(G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment and information as to the categories of sources or records, and (f) relating to developing agency rules for gaining access and making corrections.

(2) *Reason for exemptions.* (i) The Office of Inspector General is an office of NASA, a component of which performs as its principal function activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2). This exemption applies only to those records and information contained in the system of records pertaining to criminal investigations. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, investigators, and witnesses.

(C) To protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with

section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App.

(D) To protect the confidentiality of non-Federal employee sources of information.

(E) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(ii) Investigative records within this system of records which are compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), are exempt under the provisions of 5 U.S.C. 552a(k)(2): *Provided, however,* That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the sources would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fullfill commitments made to protect the confidentiality of sources.

(E) To protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App.

(F) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(G) To prevent disclosure of law enforcement techniques and procedures.

(H) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(iii) Records within this system of records comprised of investigatory material compiled solely for the purpose of determining suitability or eligibility for Federal civilian employment or access to classified information, are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To fulfill commitments made to protect the confidentiality of sources.

(B) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(b) *Security Records System.*—(1) *Sections of the Act from which exempted.* The Security Records System is exempted from the following sections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment, and information as to the categories of sources of records; and (f) relating to developing Agency rules for gaining access and making corrections.

(2) *Reason for exemption.* (i) Personnel Security Records contained in the system of records which are compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that the disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the sources would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To fulfill commitments made to protect the confidentiality of sources.

(B) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(ii) Criminal Matter Records are contained in the system of records and are exempt under the provisions of 5 U.S.C. 552a(k)(2): *Provided, however,* That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the sources would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fulfill commitments made to protect the confidentiality of sources.

(E) To assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(iii) The system of records includes records subject to the provisions of 5 U.S.C. 552(b)(1) (required by Executive order to be kept secret in the interest of national defense or foreign policy), and such records are exempt under 5 U.S.C. 552a(k)(1).

Subpart 1212.6—Instructions for NASA Employees

§ 1212.600 General policy.

In compliance with the Privacy Act and in accordance with the requirements and procedures of this regulation, NASA has an obligation to:

(a) Advise individuals, when requested, as to whether any specific system of records maintained by NASA contains records pertaining to them;

(b) Prevent records being maintained by NASA in a system of records for a specific purpose from being used or made available for another purpose without the individual's consent; and,

(c) Permit individuals to have access to information about themselves in a

NASA system of records, to have a copy made, and, if appropriate under Subpart 1212.3 of this part, to amend the records.

§ 1212.601 Maintenance and publication requirements for systems of records.

(a) In maintaining systems of records, NASA shall:

(1) Maintain any record in a system of records for necessary and lawful purposes only, assure that the information is current and accurate for its intended use, and provide adequate safeguards to prevent misuse of the information.

(2) Maintain only information about an individual relevant and necessary to accomplish a purpose or to carry out a function of NASA authorized by law or by Executive order of the President.

(3) Maintain records used by NASA officials in making any determination about any individual with such accuracy, relevance, timeliness, and completeness reasonably necessary to assure fairness to the individual in making the determination.

(4) Maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute, by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(5) Maintain and provide access to records of other agencies under NASA's control consistent with the regulations of this part.

(b) Any system of records maintained by NASA which is in addition to or substantially different from a Governmentwide systems of records described in a systems notice published by another agency shall be regarded as a NASA system of records subject to the requirements of this part, and the NASA system notice shall include a reference to the system notice of the other agency.

(c) NASA shall provide adequate advance notice to Congress and OMB of any proposal to establish a new system of records or alter any existing system of records as prescribed by OMB Circular No. A–130, Appendix I.

§ 1212.602 Requirements for collecting information.

In collecting information for systems of records, the following requirements shall be met:

(a) Information shall be collected to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. Exceptions to this policy may be made under certain circumstances, such as one of the following:

(1) There is a need to verify the accuracy of the information supplied by an individual.

(2) The information can only be obtained from a third party.

(3) There is no risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned.

(4) Provisions are made to verify with the individual information collected from a third party.

(b) Each individual who is asked to supply information shall be informed of the following:

(1) The authority (whether granted by statute, or by Executive order of the President) for requesting the information;

(2) Whether disclosure is mandatory or voluntary;

(3) The intended official use of the information;

(4) The routine uses which may be made of the information, as published in the system notices;

(5) The effects, if any, on the individual of not providing all or any part of the requested information.

§ 1212.603 Mailing lists.

NASA will not sell, rent, or otherwise disclose an individual's name and address to anyone, unless otherwise specifically authorized by law.

§ 1212.604 Social security numbers.

(a) It is unlawful for NASA to deny to individuals any rights, benefits, or privileges provided by law because of the individuals' refusal to disclose their social security numbers, except where:

(1) The disclosure is required by law; or

(2) The disclosure is from a system of records in existence and operating before January 1, 1975, and was required under statute or regulation adopted before that date to verify the identity of the individual(s).

(b) Any time individuals are requested to disclose their social security numbers, NASA shall indicate whether that disclosure is mandatory or voluntary, by what authority the numbers are requested, and what uses will be made of them.

§ 1212.605 Safeguarding information in systems of records.

(a) Safeguards appropriate for a NASA system of records shall be developed by the system manager in a written plan approved by the Installation Security Officer.

(b) When records or copies of records are distributed within NASA they shall be prominently identified as records protected under the Privacy Act and shall be subject to the same safeguard, retention, and disposition requirements applicable to the system of records.

(c) When records or copies of records are distributed to other Federal agencies, other than those having custody of the systems of records, they shall be prominently identified as records protected under the Privacy Act.

(d) Records that are otherwise required by law to be released to the public need not be safeguarded or identified as Privacy Act records.

§ 1212.606 Duplicate copies of records or portions of records.

(a) NASA officials may maintain and use, for official purposes, duplicate copies of records or portions of records from a system of records maintained by their own organizational unit. This practice should occur only where there are justifiable organizational needs for it, e.g., where geographic distances make use of the system of records time consuming or inconvenient. These duplicate copies shall not be considered a separate NASA system of records. For example, an office head or designee may keep duplicate copies of personnel, training, or similar records on employees within the organization for administrative convenience purposes.

(b) No disclosure shall be made from duplicate copies outside of the organizational unit. Any outside request for disclosure shall be referred to the appropriate system manager for response.

(c) Duplicate copies are subject to the same safeguard requirements applicable to the system of records.

Subpart 1212.7—NASA Authority and Responsibilities

§ 1212.700 NASA employees.

(a) Each NASA employee is responsible for adhering to the requirements of the Privacy Act and this regulation.

(b) An employee shall not seek or obtain access to a record in a NASA system of records or to copies of any portion of such records under false pretenses. Only those employees with an official "need to know" may seek and obtain access to records pertaining to others.

(c) Employees shall refrain from discussing or disclosing personal information about others which they have obtained because of their official

need to know such information in the performance of official duties.

(d) To the extent included in a contract which provides for the maintenance by or on behalf of NASA of a system of records to accomplish a function of NASA, the requirements of this section shall apply to contractor employees who work under the contract.

§ 1212.701 Assistant Deputy Administrator.

The Assistant Deputy Administrator is responsible for:

(a) Making final Agency determinations on appeals (§ 1212.400);

(b) Authorizing exemptions from one or more provisions of the Privacy Act for NASA systems of records (See § 1212.500); and,

(c) Authorizing an extension for making a final determination on an appeal (§ 1212.400(d)).

§ 1212.702 Associate Administrator for Management Systems and Facilities.

(a) The Associate Administrator for Management Systems and Facilities is responsible for the following:

(1) Providing overall supervision and coordination of NASA's policies and procedures under this regulation;

(2) Approving system notices for publication in the **Federal Register**;

(3) Assuring that NASA employees and officials are informed of their responsibilities and that they receive appropriate training for the implementation of these requirements; and,

(4) Preparing and submitting the biennial report on implementation of the Privacy Act to OMB and special reports required under this regulation, including establishing appropriate reporting procedures in accordance with OMB Circular No. A–130.

(b) The Associate Administrator for Management Systems and Facilities may establish a position of 'NASA Privacy Officer,' or designate someone to function as such an officer, reporting directly to the Associate Administrator for Management Systems and Facilities, and delegate to that officer any of the functions described in paragraph (a) of this section.

§ 1212.703 Headquarters and Field or Component Installations.

(a) Officials-in-Charge of Headquarters Offices, Directors of NASA Field Installations and Officials-in-Charge of Component Installations are responsible for the following with respect to those systems of records maintained in their organization:

(1) Avoiding the establishment of new systems of records or new routine uses of a system of records without first complying with the requirements of this regulation;

(2) Ensuring that the requirements of this regulation and the Privacy Act are followed by employees;

(3) Ensuring that there is appropriate coordination within NASA before a determination is made to disclose information without the individual's consent under authority of 5 U.S.C. 552a(b) (See § 1212.203(g)); and

(4) Providing appropriate oversight for responsibilities and authorities exercised by system managers under their jurisdiction (§ 1212.704).

(b) Directors of NASA Field Installations and Officials-in-Charge of Component Installations or designees may establish a position of installation Privacy Officer to assist in carrying out the responsibilities listed in paragraph (a) of this section.

§ 1212.704 System manager.

(a) Each system manager is responsible for the following with regard to the system of records over which the system manager has cognizance:

(1) Overall compliance with the "Privacy Act—NASA Regulations" (NASA Management Instruction (NMI) 1382.17) and the Computer Matching Program (NMI 1382.18);

(2) Ensuring that each person involved in the design, development, operation, or maintenance of the system of records is instructed with respect to the requirements of this regulation and the possible penalties for noncompliance;

(3) Submitting a request to the Assistant Deputy Administrator for an exemption of the system under subpart 1212.5 of this part, setting forth in proposed rulemaking form the reasons for the exemption and citing the specific provision of the Privacy Act which is believed to authorize the exemption;

(4) After consultation with the Office of the General Counsel or the Chief Counsel, making reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(5) Making an initial determination on an individual's request to correct or amend a record, in accordance with § 1212.302;

(6) Prior to disclosure of any record about an individual, assuring that the record is first reviewed for accuracy, completeness, timeliness, and relevance;

(7) Authorizing disclosures of a record without the individual's consent under § 1212.203(g)(1) through (12);

(8) Responding within the requirements of § 1212.200 to an individual's request for information as to whether the system contains a record pertaining to the individual;

(9) Responding to an individual's request for access and copying of a record, in accordance with subpart 1212.2 of this part;

(10) Amending a record under subpart 1212.3 of this part, or filing in an individual's record a statement of dispute;

(11) Preparing an addendum to an individual's statement of dispute to be filed in the individual's records, in accordance with § 1212.401;

(12) Maintaining disclosure accountings in accordance with 5 U.S.C. 552a(c) and 14 CFR 1212.203. This includes records disclosed pursuant to any computer matching programs;

(13) Notifying persons to whom a record has been disclosed and for which an accounting was made as to disputes and corrections involving the record; and

(14) Developing appropriate safeguards for the system of records in accordance with § 1212.605(a).

(b) Where a system of records has subsystems described in the system notice, the subsystem manager will have the responsibilities outlined in paragraph (a) of this section. Although the system manager has no line authority over subsystem managers, the system manager does have overall functional responsibility for the total system, and may issue guidance to subsystem managers on implementation of this part. When furnishing information for required reports, the system manager will be responsible for reporting the entire system of records, including any subsystems.

(c) Exercise of the responsibilities and authorities in paragraph (a) of this section by any system or subsystem managers at a NASA Installation shall be subject to any conditions or limitations imposed in accordance with § 1212.703 (a)(4) and (b).

§ 1212.705 Assistant Administrator for Procurement.

The Assistant Administrator for Procurement is responsible for developing appropriate procurement regulations and procedures under which NASA contracts requiring the maintenance of a system of records in order to accomplish a NASA function are made subject to the requirements of this part.

§ 1212.706 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this regulation is delegated to the officials

named, subject to any conditions or limitations imposed in accordance with this subpart 1212.7.

Subpart 1212.8—Failure To Comply With Requirements of This Part

§ 1212.800 Civil remedies.

Failure to comply with the requirements of the Privacy Act and this part could subject NASA to civil suit under the provisions of 5 U.S.C. 552a(g).

§ 1212.801 Criminal penalties.

(a) A NASA officer or employee may be subject to criminal penalties under the provisions of 5 U.S.C. 552a(i) (1) and (2).

(1) Section 552a(i)(1). Any officer or employee of an agency, who by virtue of employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Section 552a(i)(2). Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) These two provisions apply to NASA civil service employees as well as those employees of a NASA contractor with responsibilities for maintaining a Privacy Act system of records.

(b) Section 552a(i)(3). Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

Dated: February 5, 1992.

Richard H. Truly,

Administrator.

[FR Doc. 92-3156 Filed 2-10-92; 8:45 am]

BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 600

Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

ACTION: Amendment to commentary.

SUMMARY: The Commission is issuing an amendment to its Commentary on the Fair Credit Reporting Act revising one sentence in comment 7 to section 609 of that Act to reflect the Commission's view that a "risk score" must be disclosed to a consumer by a consumer reporting agency.

EFFECTIVE DATE: February 11, 1992.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Clarke Brinckerhoff, Attorney, Division of Credit Practices, Federal Trade Commission, Washington, DC 20580, 202-326-3208.

SUPPLEMENTARY INFORMATION: The Commission published its Commentary on the Fair Credit Reporting Act ("FCRA") on May 4, 1990 (55 FR 18804) to provide guidance to the consumer reporting industry, consumer report users, and consumers.

Section 609 of the FCRA specifies the disclosures that consumer reporting agencies must make to consumers who properly request the information maintained on them. The Commentary, in comment 7 to section 609, currently includes the following sentence:

> Similarly, a point score that is provided to evaluate the report for its recipient (and/or the scoring system used to calculate the score) need not be disclosed, because the score is not used in preparing future reports. 55 FR 18822.

Based on a review of the use of point scores (also referred to as risk scores) by consumer reporting agencies and consistent with the legislative history of the FCRA, the Commission has reconsidered its position on the disclosure of a risk score that is provided to assist the recipient in evaluating the report. The Commission has determined that such risk scores must be disclosed by consumer reporting agencies to consumers requesting information maintained on them.

Risk scores, which were used less frequently in the past, now are commonly provided by consumer reporting agencies to assist clients in interpreting the agencies' consumer reports. Indeed, through recent investigations in the consumer reporting industry, the Commission has learned that, in some instances, a consumer reporting agency provides only a risk score and no other information to its client. Congresswoman Leonor Sullivan, when introducing the conference report on the bill that ultimately enacted the FCRA, stated:

> (The House conferees) stressed that the consumer should have access to all information *in any form which would be relayed to a prospective employer, insurer or creditor in making a judgment as to the worthiness of the individual's application for such benefits* * * *. It is not intended that the credit reporting firm should have a free hand in excluding from the consumer's access information other than medical information it just does not want to give him, but will give to a client-user.
>
> 116 Cong. Rec. 36572, October 12, 1970 (Emphasis added)

A consumer reporting agency provides a risk score (or other numerical evaluation, however named) to its client (creditor, insurer, employer, etc.) specifically to assist that client in making a judgment as to the worthiness of the consumer's application (for credit, insurance, employment, etc.). In light of this information and consistent with the legislative history of the FCRA, the Commission believes that the FCRA Commentary should be revised. Accordingly, comment 7 to section 609 (55 FR 18822) is revised by deleting the above-quoted sentence and replacing it with the following:

> However, a risk score (or other numerical evaluation, however named) that is reported by a consumer reporting agency to a client to assist in evaluating a consumer's eligibility for credit (or other permissible purposes) must be disclosed (along with an explanation of the risk score), because, as indicated in the legislative history, each consumer should have access to all such information, regardless of form. [See 116 Cong. Rec. 36572 (1970) (remarks of Rep. Sullivan).]

List of Subjects in 16 CFR Part 600

Credit, Trade practices.

For the reasons set out in the preamble, title 16, chapter I, part 600 of the Code of Federal Regulations, is amended as follows:

PART 600—STATEMENT OF GENERAL POLICY OR INTERPRETATIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 15 U.S.C. 1681s and 16 CFR 1.73.

2. Section 609 of the appendix is amended by revising comment 7 to read as follows:

Appendix—Commentary on the Fair Credit Reporting Act

* * * * *

Section 609—Disclosure to Consumers

* * * * *

7. Ancillary Information

A consumer reporting agency is not required to disclose information consisting of an audit trail of changes it makes in the

consumer's file, billing records, or the contents of a consumer relations folder, if the information is not from consumer reports and will not be used in preparing future consumer reports. Such data is not included in the term "information in its files" which must be disclosed to the consumer pursuant to this section. However, a risk score (or other numerical evaluation, however named) that is reported by a consumer reporting agency to a client to assist in evaluating a consumer's eligibility for credit (or other permissible purposes) must be disclosed (along with an explanation of the risk score), because, as indicated in the legislative history, each consumer should have access to all such information, regardless of form. [See 116 Cong. Rec. 36572 (1970) (remarks of Rep. Sullivan).] A consumer reporting agency must disclose claims report information only if it has appeared in consumer reports.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-3193 Filed 2-10-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92-20]

Reciprocal Privileges Extended to Aircraft of Argentina

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by expanding the exemptions from Customs duties and internal revenue taxes on equipment, spare parts, and supplies withdrawn from Customs or internal revenue custody for use by commercial aircraft registered in Argentina. Previously, the exemption for Argentine aircraft supplies has not applied to aircraft fuel and lubricants. The Department of Commerce has advised Customs that the Government of Argentina now affords exemption privileges to U.S.-registered aircraft for fuel and lubricants, in connection with international commercial operations, substantially reciprocal to those exemption privileges which may be provided under U.S. law to aircraft of foreign registry. Accordingly, commercial aircraft of Argentine registry will now be exempt from the payment of duties and taxes on fuel and lubricants withdrawn from Customs or internal revenue custody.

DATES: This amendment is effective January 27, 1992.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Entry Rulings Branch (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin from Customs or internal revenue custody, for use as supplies (including equipment), ground equipment, maintenance, or repair of the aircraft, without the payment of Customs duties and/or internal revenue taxes. This exemption from duties and taxes is a privilege which may be granted to aircraft registered in a foreign country only if the Secretary of Commerce finds, and so advises the Secretary of the Treasury, that the foreign country in question affords substantially reciprocal privileges to aircraft registered in the United States. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those foreign countries whose aircraft have been granted such an exemption.

In T.D. 54925(1) an exemption from duties and taxes was granted under 19 U.S.C. 1309 and 1317 to aircraft registered in Argentina with regard to "airline equipment, spare parts, and supplies other than fuel and lubricants." Accordingly, § 10.59(f) reflects this exemption, including the exception thereto regarding fuel and lubricants.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce has found, and has so advised the Customs Service, that the Government of Argentina affords exemption privileges for fuel and lubricants to aircraft of U.S. registry, in connection with international commercial operations, substantially reciprocal to those exemption privileges provided to aircraft of foreign registry under 19 U.S.C. 1309 and 1317. This document amends the list in § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by removing the exception which indicated that Argentine commercial aircraft were not exempt from the payment of duties and taxes on fuel and lubricants withdrawn from Customs or internal revenue custody.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. In addition, for the same reasons and because Argentina is presently granting reciprocal exemption privileges to U.S. aircraft, a delayed effective date is not appropriate.

Regulatory Flexibility Act and Executive Order 12291

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to regulations such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or by any other statute. In addition, this document does not meet the criteria for a "major rule" as specified in E.O. 12291 and, accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Section 10.59 also issued under 19 U.S.C. 1309, 1317;

* * * * *

§ 10.59 [Amended]

2. Section 10.59(f) is amended by adding the number 92-20 opposite "Argentina" in the column headed "Treasury Decision(s)", and by removing the words "other than fuel and lubricants" opposite "Argentina" in the column headed "Exceptions if any, as noted".

Dated: February 6, 1992.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 92-3192 Filed 2-10-92; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 301

[TD 8391]

RIN 1545-AM71

Statute of Limitations on Collection After Assessment and Collection After Commencement of Judicial Proceedings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulatory amendments regarding the statute of limitations on collection after assessment and collection after the commencement of judicial proceedings. The existing regulations provide that a proceeding in court to collect an assessable tax may be begun, or a levy for the collection of an assessable tax may be made, within six years after the timely assessment of such tax. The Omnibus Budget Reconciliation Act of 1990 amended the Internal Revenue Code by extending the statute of limitations on collection after assessment from six to ten years. The existing regulations also provide that the period during which a tax liability may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer. The Technical and Miscellaneous Revenue Act of 1988 amended the Internal Revenue Code to provide that if a timely proceeding in court for the collection of a tax is commenced, the period during which the tax may be collected by levy shall be extended until the liability or a judgment arising out of the liability is satisfied or becomes unenforceable. The regulations amend the existing regulations to conform them to the present law.

EFFECTIVE DATES: The amendment concerning § 301.6502-1 (a)(1) and (a)(2)(i) (the statute of limitations on collection after assessment) is effective for taxes assessed after November 5, 1990, and for taxes assessed on or before November 5, 1990, if the period prescribed in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990) for the collection of such taxes had not expired as of November 5, 1990.

The amendment concerning § 301.6502-1(a)(3) (collection after commencement of judicial proceedings) is effective for levies issued after November 10, 1988.

The amendment concerning § 301.6502-1(c) is effective February 11, 1992.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202-535-9682 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6502 of the Internal Revenue Code. The regulations reflect the amendment of section 6502 by section 11317 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-5080), by section 1015(u)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647), and by section 7811(k)(2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-239).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** on June 18, 1991 (56 FR 27928). Prior to publication of the notice, the Internal Revenue Service gave the Small Business Administration the opportunity to comment.

The Internal Revenue Service has not received any public comments on the proposed regulation. The proposed regulation, therefore, is adopted in toto as the final regulation.

Section 11317 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508, 104 Stat. 1388) amended section 6502(a) of the Internal Revenue Code by extending the statute of limitations on collection after assessment from six years to ten years. The regulation conforms the existing regulations to section 6502(a) in its present form.

Section 1015(u)(1) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100-647, 102 Stat. 3573) amended section 6502 of the Internal Revenue Code to provide that if a timely proceeding in court for the collection of a tax is commenced, the period during which the tax may be collected by levy shall be extended until the tax liability or a judgment against the taxpayer arising from the liability is satisfied or becomes "enforceable." The word "enforceable" appeared in the statute through a clerical error. The error was corrected by section 7811(k)(2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-239, 103 Stat. 2412), which changed the word "enforceable" to "unenforceable." The existing regulations under section 6502(a) of the Internal Revenue Code provide that the period for collection by levy after an assessment shall not be extended or curtailed by reason of a judgment against a taxpayer. This is now an incorrect statement of the law, in view of the TAMRA amendment. The regulations would conform the existing regulations to section 6502(a) in its present form.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal authors of these proposed regulations are Kevin B. Connelly and Anne P. Rosselot, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6502–1 is amended as follows:

1. Paragraph (a)(1) is amended by removing the words "6 years" and adding the words "10 years" in their place.

2. Paragraph (a)(2)(i) is amended by removing the words "6-year period of limitation" and adding "10-year period of limitation" in their place.

3. Paragraph (a)(3) is revised to read as set forth below.

4. Paragraph (c) is added to read as set forth below.

§ 301.6502–1 Collection after assessment.

(a) * * *

(3) If a proceeding in court for the collection of a tax is begun within the period provided in paragraph (a)(1) of this section (or within any extended period as provided in paragraph (a)(2) of this section), the period during which the tax may be collected by levy is extended until the liability for the tax or for a judgment against the taxpayer arising from the liability is satisfied or becomes unenforceable.

* * * * *

(c) *Effective dates.* (1) Paragraph (a)(1) of this section shall apply to—

(i) Taxes assessed after November 5, 1990; and

(ii) Taxes assessed on or before November 5, 1990, if the period prescribed in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990) for the collection of such taxes has not expired as of such date.

(2) Paragraph (a)(3) of this section shall apply to levies issued after November 10, 1988.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: January 7, 1992.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92–2026 Filed 2–10–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS BOISE (SSN 764) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BOISE (SSN 764) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex 1, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS BOISE (SSN 764) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS BOISE (SSN 764).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), Annex I
* * * * *		
USS BOISE	SSN 764	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

TABLE THREE

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; section 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; section 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; section 2(k), Annex I
* * *	*	*	*	*	*	*	*	
USS BOISE	SSN 764	—	—	209	4.3	6.1	3.4	1.7 below.

Dated: January 16, 1992.

J. E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 92-3132 Filed 2-10-92; 8:45 am]

BILLING CODE 3810-AE-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 570

[Acquisition Circular AC-91-1, Supplement No. 1]

General Services Administration Acquisition Regulation; Clauses for Acquisitions of Leasehold Interests in Real Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation, Acquisition Circular AC-91-1, extends the expiration date to January 31, 1993. The intended effect is to extend the policies and procedures established in AC-91-1, which revised part 570 of the regulation, to modify the prescriptions for use of certain contract clauses in acquisitions of leasehold interests in real property by simplifying the terms and conditions of leases for blocks of space in buildings of 10,000 square feet or less.

DATES: *Effective date:* February 1, 1992. *Expiration date:* January 31, 1993.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy (VP), (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comment

This rule was not published in the **Federal Register** for public comment because it is not a significant revision as defined in section 1.501-1 of the Federal Acquisition Regulation.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., is not applicable because the proposed rule was not required to be published in the **Federal Register.**

D. Paperwork Reduction Act

The temporary rule does not contain information collection requirements that require approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 48 CFR Part 570

Government procurement.

PART 570 [AMENDED]

1. The authority citation for 48 CFR part 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR part 570 is amended by the following supplement to Acquisition Circular AC-91-1.

General Services Administration Acquisition Regulation Acquisition Circular AC-91-1, Supplement No. 1

TO: All GSA Contracting Activities.

SUBJECT: Revision of prescriptions for use of certain clauses in acquisitions of leasehold interests in real property.

1. *Purpose.* This supplement extends the expiration date of the General Services Administration Acquisition Regulation Acquisition Circular AC-91-1.

2. *Effective date.* February 1, 1992.

3. *Expiration date.* Acquisition Circular AC-91-1 and this supplement will expire on January 31, 1993, unless canceled earlier.

Dated: January 31, 1992.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92-3131 Filed 2-10-92; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS has established a directed fishing allowance and is prohibiting directed fishing for pollock in statistical area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent the first quarter allowance of total allowable catch (TAC) for pollock in statistical area 63 in the GOA from being exceeded. The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), February 7, 1992, through 12 midnight, A.l.t., March 29, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by the Secretary of Commerce under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific

Fishery Management Council under the Magnuson Fishery Conservation and Management Act and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery is TAC, as defined at § 672.20(c). Under the final notice of specifications (57 FR 2844; January 24, 1992), the TAC of pollock for the combined Western/Central (W/C) Regulatory areas in the GOA was established as 84,000 metric tons (mt).

Under regulations found at 50 CFR 672.20(a)(2)(iv), the TAC for pollock in the combined W/C Regulatory areas is apportioned among statistical areas 61, 62, and 63, in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. Each apportionment is divided equally into the four quarterly reporting periods of the fishing year. The apportionment to statistical area 63 is 46,200 mt. This amount is further divided into quarterly allowances of 11,550 mt.

Within any fishing year, any unharvested amount of any quarterly allowance of TACs will be added in equal proportions to the quarterly allowances of the following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance. Within any fishing year, harvests in excess of a quarterly allowance of any TAC will be deducted in equal proportions from the quarterly allowances of each of the remaining quarters of that fishing year.

Under § 672.20(c)(2), the Director, Alaska Region, NMFS (Regional Director), has determined that the apportionment in statistical area 63 will soon be reached. NMFS has established a directed fishing allowance of 10,800 mt, and is setting aside the remaining 750 mt of the current apportionment as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishery soon will catch its allowance. Consequently, under § 672.20(c)(2), NMFS is prohibiting directed fishing for pollock in GOA statistical area 63, effective from 12 noon A.l.t., February 7, 1992, through 12 midnight, A.l.t., March 29, 1992.

After this closure, in accordance with § 672.20(g)(4), amounts of pollock retained on board a vessel in GOA statistical area 63 may not equal or exceed 20 percent of the aggregate amount of all other fish species retained at the same time by the vessel during the same trip as measured in round weight equivalents.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 5, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-3147 Filed 2-5-92; 4:36 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 28
Tuesday, February 11, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 92-8]

RIN 2125-AC84

Design Standards for Highways; Requirements for Roadside Barriers and Safety Appurtenances

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Highway Administration (FHWA) is requesting comments on possible revisions of 23 CFR part 625 to revise the guidelines and establish standards for installation of roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. The objective of the revisions would be to provide an enhanced level of crashworthy performance in roadside barriers and other safety appurtenances to accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles.

DATES: Comments must be received on or before April 17, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 92-8, Federal Highway Administration, room 4232, HCC-10, 400 Seventh Street SW., Washington, DC., 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Hatton, Jr., Office of Engineering (202) 366-1329, or Mr. Wilbert Baccus, Office of the Chief Counsel (202) 366-0780. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 1073 of Public law 102-240, 105 Stat. 1914, The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), enacted December 18, 1991, states that, "* * * the Secretary (of Transportation) shall initiate a rulemaking proceeding to revise the guidelines and establish standards for installation of roadside barriers and other safety appurtenances, included longitudinal barriers, end terminals, and crash cushions. Such rulemaking shall reflect state-of-the-art designs, testing, and evaluation criteria contained in National Cooperative Highway Research Program Report 230 (Recommended Procedures for the Safety Performance Evaluation of Highway Appurtenances), relating to approval standards which provide an enhanced level of crashworthy performance to accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles." The section further states that, "[n]ot later than 1 year after the date of enactment of this Act, the Secretary shall complete the rulemaking proceeding * * * and issue a final rule regarding the implementation of revised guidelines and standards for acceptable roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such revised guidelines and standards shall accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles and shall be applicable to the refurbishment and replacement of existing roadside barriers and safety appurtenances as well as to the installation of new roadside barriers and safety appurtenances.".

Current FHWA guidance and requirements on traffic barriers and safety appurtenances are found in 23 CFR part 625 (Design Standards for Highways) where the following relevant documents are cited: "A Policy on Geometric Design of Highways and Streets," AASHTO 1984; "Standard Specifications for Highway Bridges," Thirteenth Edition, AASHTO 1983, and "Interim Specifications, Bridges," AASHTO, issued annually 1984, through 1988; "Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals," AASHTO 1985, and "Interim Specifications, Bridges," AASHTO 1986 through 1988; "Roadside Design Guide," AASHTO 1989; and "Guide Specifications for Bridge Railings," AASHTO 1989. None of these documents expressly addresses performance with the vehicles cited in the ISTEA except the "Guide Specifications for Bridge Railings," which does recommend testing bridge railings with a pickup truck (and larger and smaller vehicles).

The National Cooperative Highway Research Program (NCHRP) Report 230 does not include guidance for testing or evaluating appurtenances with the vehicles cited in the ISTEA. However, the NCHRP has an on-going project to develop a replacement for Report 230. This project should be completely by the middle of this year. The Report 230 replacement document will address testing and evaluating appurtenances with pickup trucks. Available data from testing appurtenances with pickups and vans should allow an assessment of the applicability of the Report 230 replacement guidance to the evaluation of appurtenance performance with the various vehicles cited in the ISTEA.

The FHWA intends that any requirements that might come from this anticipated rulemaking will lead to cost beneficial safety appurtenance installations. In order to meet the statutory deadline established in section 1073 of the ISTEA, analyses based on currently available data and research results and engineering judgment, as well as public input, will be significant bases for any requirements resulting from this anticipated rulemaking. Of course, any relevant new research that can be completed in time to meet the schedule will be used.

The FHWA is also aware that NCHRP has an active research project, "Improved Procedures for Cost-Effectiveness Analysis of Roadside Safety Features," scheduled for completion in late 1993. This study is expected to provide improved guidance and support for designing and selecting safety appurtenances to meet the needs of the occupants of the full range of vehicles using our highways. The results from this NCHRP study may be used to refine any requirements that might result from the current rulemaking process.

At this time the Federal Highway Administration (FHWA) is requesting all interested parties with information or views on the subject of this ANPRM to respond to the docket at the address given under the heading **ADDRESSES.** Of

particular value will be information on safety appurtenance testing with vehicles of the types cited in the ISTEA, data on accidents involving those vehicles striking traffic barriers or other safety appurtenances, and highway agency appurtenance selection procedures that are intended to ensure installation of appurtenances compatible with the vehicles cited in the ISTEA.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action being considered by the FHWA in this document would amend requirements for traffic barriers and other safety appurtenances installed on the National Highway System. The FHWA has not yet determined whether this action would constitute a major rule under Executive Order 12291. However, because the action is expected to implement state-of-the-art practices not greatly different from those currently followed, the FHWA does not at this time consider this to be a significant regulation under the regulatory policies and procedures of the Department of Transportation. The potential economic impact of this rulemaking is not known at this stage. Therefore, a full regulatory evaluation has not yet been prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency will evaluate the effects of this proposal on small entities. Following the agency's evaluation, the FHWA will certify whether this proposed action will have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action will be analyzed in accordance with the principles and criteria contained in Executive Order 12612 to determine whether it has sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency will analyze this action for the purpose of the National Environmental Policy Act of 1969 to determine whether this action will have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads.

Authority: 23 U.S.C. 109, 315, and 402; section 1073 of Pub. L. 102–240, 105 Stat. 1914; 49 CFR 1.48 (b) and (n).

Issued on: February 4, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92–3169 Filed 2–10–92; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–3–91]

RIN 1545–AQ14

Capitalization of Certain Policy Acquisition Expenses; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (FI–3–91), which was published in the **Federal Register** on November 15, 1991 (56 FR 58003). This proposed regulation relates to the requirement that insurance companies capitalize specified policy acquisition expenses for tax purposes.

FOR FURTHER INFORMATION CONTACT: Gary Geisler, (202) 566–3478 (not a toll-free number.).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction amends the Income Tax Regulations (26 CFR part 1) under 848 of the Internal Revenue Code, relating to the capitalization of certain policy acquisition expenses of insurance companies. Section 848 was added to the Code by section 11301(a) of the Revenue Reconciliation Act of 1990, Public Law No. 101–508.

Need for Correction

As published, the proposed regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations (FI–3–91), which was the subject of FR Doc. 91–27515, is corrected as follows:

1. On page 58014, column 2, § 1.848–3(d), paragraph (ii) of *Example 4*, line 18, the language "(40%×8,000) and as having paid return" is corrected to read "(40%×8,000) and is treated as having paid return".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–3212 Filed 2–10–92; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 734]

RIN 1512–AA07

Realignment of the Northern Boundary of the Alexander Valley Viticultural Area (89F751P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Petition for rulemaking: withdrawal.

SUMMARY: ATF is withdrawing from further consideration the notice of proposed rulemaking regarding the realignment of the Northern Boundary of the Alexander Valley viticultural area, as proposed in Notice No. 719 published in the **Federal Register** on May 20, 1991 (56 FR 23041). After considering the comments received in response to the notice, the Bureau has concluded that the petitioner failed to meet the burden

of showing that the present northern boundary of the Alexander Valley viticultural area should be revised. The northern boundary of the Alexander Valley viticultural area will therefore remain unchanged.

DATES: This withdrawal is effective February 11, 1992.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1991, ATF published Notice No. 719 in response to a petition submitted by Mr. James W. Reed of Oak Ridge Ranch and Vineyards. Mr. Reed requested that the northern boundary of the Alexander Valley viticultural area be revised to include vineyard land that was not included when the viticultural area was established by Treasury Decision ATF-187 on November 23, 1984.

Mr. Reed stated that his northernmost eight-acre vineyard block known as CS73 lies just outside the northern boundary of the Alexander Valley viticultural area. Mr. Reed further stated that this vineyard is isolated and, in fact, cannot be reached or the fruit removed without entering the present Alexander Valley viticultural area. Mr. Reed owns other vineyards within the Alexander Valley viticultural area and only recently became aware that vineyard block CS73 was not included within the established boundaries of the Alexander Valley viticultural area. However, the current boundaries do not split any of Mr. Reed's existing vineyards. Mr. Reed submitted evidence that the topography, climate, and soils of the proposed area of extension were similar to the topography, climate, and soils within the Alexander Valley viticultural area. However, the only evidence of name submitted by the petitioner consisted of letters from three wineries which considered that Mr. Reed's vineyards belonged in the Alexander Valley viticultural area.

Currently, the northern boundary of the Alexander Valley viticultural area follows the line between Sonoma and Mendocino Counties, with the viticultural area located entirely within Sonoma County. Furthermore, the northern boundary of the Alexander Valley viticultural area coincides with the northern boundary of the Northern Sonoma viticultural area. With one exception, the boundaries of the Northern Sonoma viticultural area generally coincide with the "outer" portions of the boundaries of the Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley viticultural areas.

The proposed extension would have only added approximately 80 acres to the Alexander Valley viticultural area. However, the revision of the northern boundary would have extended Alexander Valley into Mendocino County. The proposed northern boundary for the Alexander Valley viticultural area would also have diveraged from the northern boundary of the Northern Sonoma viticultural area. None of the evidence submitted by the petitioner addressed these issues. Thus, in Notice No. 719, ATF specifically solicited comments on these issues.

Comments Received in Response to Notice No. 719

In response to the notice of proposed rulemaking, ATF received 17 comments. Many of the comments were given the same consideration as those received on or before the closing date, since it was practical to do so. Sixteen of the comments were in opposition to the proposed extension, and the remaining comment also expressed concerns about whether there was sufficient evidence to justify extending the Alexander Valley viticultural area outside of Sonoma County.

While several of the comments were general, many of the commenters specifically addressed the issues which ATT had raised in Notice No. 719. A comment from the Sonoma County Grape Growers Association stated that "[a]s long as anyone in our organization can remember, Alexander Valley has been inextricably and exclusively linked to Sonoma County." The owner of a vineyard asserted that "in 14 decades Alexander Valley has been in Sonoma County and does not include any of Mendocino County." A comment from several vineyard and winery owners stated that "[t]he association of the Valley with the County is absolute as there has never, locally or elsewhere, been any usage of the name outside of Sonoma County." The Alexander Valley Association commented that "[f]or over 100 years Alexander Valley has been recognized as a winegrape growing area wholly within Sonoma County, not extending into any adjoining county." These comments from local wineries and grape growers contradicted the petitioner's contention that the area of the proposed extension was locally known as part of Alexander Valley.

In response to these comments, ATF researched the materials on file from the original Alexander Valley rulemaking record, looking for evidence which would support the extension of the Alexander Valley viticultural area into Mendocino County. ATF could find no such evidence; nor could the Sonoma County Agricultural Extension Agent, whom ATF contacted, provide any such evidence.

Decision

After carefully studying the evidence and analyzing the comments, ATF has found no basis for amending the current northern boundary of the Alexander Valley viticultural area. The petitioner demonstrated that the proposed area of extension does share similar geographical characteristics (climate, soil, elevation, physical features, etc.) with the current Alexander Valley viticultural area. However, the weight of the evidence supports the finding that Alexander Valley has always been identified with Sonoma County and has never been known to extend into Mendocino County. The petitioner has not shown that the proposed area of extension is locally or nationally known as part of Alexander Valley. For this reason, ATF is withdrawing Notice No. 719.

Drafting Information

The author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This document is issued under the authority in 27 U.S.C. 205.

Dated: February 4, 1992.

Stephen E. Higgins,

Director.

[FR Doc. 91–3329 Filed 2–10–91; 8:45 am]

BILLING CODE 4810-31-M

Notices

Federal Register
Vol. 57, No. 28
Tuesday, February 11, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Intent To Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license for practice in Canada to the Bovine Blood Typing Laboratory, Saskatoon, Saskatchewan, on the Canadian counterpart of U.S. Patent Application Serial No. 07/764,466, "Diagnostic Assays for Genetic Mutations Associated with Bovine Leukocyte Adhesion Deficiency," filed September 20, 1991. Licenses for practice in the United States of America and certain other foreign countries remain available and interested parties are invited to apply. Notice of Availability was given on January 23, 1992, in the **Federal Register**.

DATES: Comments must be received on or before April 13, 1992.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville, Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/504–6786, (FTS) 964–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention for the said applicant has submitted a complete and sufficient application for a license to practice in Canada; promises to make the resources available to bring the invention to practical application in Canada; and, commits itself to keep the invention available to the Canadian public on reasonable terms. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

M. Ann Whitehead,
Coordinator, National Patent License Program.

[FR Doc. 92–3191 Filed 2–10–92; 8:45 am]
BILLING CODE 3410–03–M

Soil Conservation Service

Finding of No Significant Impact for Ararat River Watershed; Patrick Soil and Water Conservation District, Virginia, New River Soil and Water Conservation District, Virginia, Surry Soil and Water Conservation District, North Carolina, Patrick and Carroll Counties, Virginia, Surry County, North Carolina

Introduction

The flood prevention measures to be installed in the Ararat River Watershed will be funded under the authority of the Watershed Protection and Flood Preventions Act, Public Law 93–566, amended (16 U.S.C. 1001–1008) and in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, Public Law 91–190, as amended (42 U.S.C. 4321 et seq.). An interdisciplinary evaluation of the environment was made by the Soil Conservation Service (SCS) in consultation with local, state and federal agencies and interested persons during the planning of these measures.

The purpose of the Ararat River Watershed Plan—Environmental Assessment is to reduce flood damages to roads, bridges and other fixed improvements as well as agriculture. Community benefits will result in Ararat, Virginia through the installation of this Plan which is sponsored by the Patrick Soil and Water Conservation District and the Patrick County Board of Supervisors.

Recommended Action

Proposed is the installation of 55 small dams (similar to farm ponds but with increased storage capacity) which will control 34 percent of the watershed drainage area and benefit 1,564 acres of high value agricultural lands. The proposed plan will prevent excessive flood damages to high value agricultural crops, loss of flood plain cropland to scour erosion and damages to roads and bridges.

Effect of Recommended Action

The proposed project will reduce agricultural flood damages by 54 percent along the mainstreams of Clark and Johnson Creeks, and Ararat River. The 25-year flood will be reduced on 1,564 acres with 375 acres flood-free from the 25-year flood. This will encourage and promote the agricultural enterprises in the watershed through improved efficiency and reduction of crop losses. The project will reduce flood damages to roads and bridges by 56 percent.

In consultation with appropriate state and federal agencies, it has been determined that there are no federally listed endangered or threatened species in the project area. Surveys will be conducted as needed to determine impacts on state listed species.

A cultural resources review was conducted of the weatershed. Surveys will be conducted prior to construction as the sites are finalized.

There will be little or no effect on wetlands. The small dams will be located in the headwaters areas of the watershed where there are very few existing wetlands. Wetland inventories will be conducted on a site-by-site basis. The small dams will create fringe areas of wetlands around 8 miles of shoreline.

There will be a loss of 4.2 miles of natural intermittent stream channel and associated ecosystem. There will be a loss of 117 acres of forested wildlife habitat. However, the proposed project will create 117 acres of warm water fishing lake, provide additional edge habitat and add diversity to the habitat.

Dams located on drainages containing native trout populations will benefit trout populations by trapping sediment that adversely affects fish health, reproduction, and physical habitat conditions. The small dams will be

located on intermittent streams where there will be little or no adverse impacts on stream temperatures. Water flowing through the principal spillway will be drawn from near the pond bottom, as opposed to the warmer surface waters.

The reduction in overbank flooding and scour will reduce sediment loads in streams. Also, impacts due to pesticides and nutrients attached to soil particles will be reduced.

The proposed project will provide 798 acre-feet of water for beneficial uses, including irrigation, livestock water, and firefighting. In addition to fishing, the ponds will provide other recreational opportunities, such as picknicking.

Land values around the small ponds will be enhanced.

Adverse Environmental Impacts Which Cannot Be Avoided

Installation of the proposed works of improvement will have short-term adverse impacts on noise, dust and exhaust levels. These levels will increase only during construction.

Alternatives

Non-structural, structural, and land treatment measures were considered in the formulation of alternatives. These measures include flood warning, flood-proofing, relocation, dikes, channels, clearing and snagging, accelerated land treatment, large floodwater retarding structures, and small floodwater retarding structures. All the measures were considered during the planning process and discounted for various reasons except for the small floodwater retarding structures.

1. No action. With no action, there would be continued agricultural flood damage on 1,885 acres with damages in excess of $378,000 annually. There would be 650 acres of flood plain damaged by scour from flooding. In addition, the disruption of services and community functions caused by the flooding of roads and bridges would continue during flood events.

2. The National Economic Development Plan (the recommended plan). This alternative would include 55 small, flood control dams to be constructed in the headwaters area of the watershed on intermittent streams. The average annual costs and benefits are $368,000 and $590,000 respectively.

3. Alternative 3. This alternative would include 29 small, flood control dams. The average annual costs and benefits are $207,000 and $328,000 respectively.

4. Alternative 4. This alternative would include 21 small, flood control dams. The average annual costs and benefits are $152,000 and $189,000 respectively.

5. Alternative 5. This alternative would include 60 small, flood control dams. The average annual costs and benefits are $434,000 and $632,000 respectively.

Consultation—Public Participation

Formal agency consultation began with the initiation of the notification of the State Single Point of Contact for Federal Assistance in November 1989. The Governor and the Virginia Division of Soil and Water Conservation were also notified of the application for federal assistance. Agencies were again notified when planning was authorized in August, 1991.

Input and involvement of the public has been solicited throughout the planning of the project. Public meetings with landowners and other interested individuals were held throughout the planning process to keep all interested parties informed of the study progress and to obtain public input to the plan and environment evaluation.

A scoping meeting was held in May, 1991 utilizing interdisciplinary planning.

Specific consultation was conducted with the State Historic Preservation Officer and the Patrick County Historical Museum Society concerning cultural resources in the watershed.

The Ararat River Watershed Plan-Environmental Assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment in January, 1992.

Agency consultation and public participation to date has shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

This Watershed Plan has been planned and environmentally evaluated to ensure that effects are commensurate with the impacts described in this Finding of No Significant Impact. The Environmental Assessment file on the Ararat River is available for public inspection through the office of Mr. George C. Norris, State Conservationist, USDA, Soil Conservation Service, Federal Building, room 9201, 400 North Eighth Street, Richmond, Virginia 23240-9999, telephone (404) 771-2455.

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Ararat River Watershed Plan is not required.

Dated: January 10, 1992.

George C. Norris,

State Conservationist.

[FR Doc. 92-3163 Filed 2-10-92; 8:45 am]

BILLING CODE 3410-16-M

Finding of no Significant Impact for Lower North River Watershed—Lilly Dike; Shenandoah Valley Soil and Water Conservation District; Rockingham County, Virginia

The flood prevention measures to be installed in the Lower North River Watershed will be funded under the authority of the Flood Control Act of 1944 (Pub. L. 534, 78th Congress) as amended and in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969. An interdisciplinarian evaluation of the environment was made by the Soil Conservation Service (SCS) in consultation with local, state and federal agencies and interested persons during the planning of these measures.

The purpose of the Lower North River Watershed Plan—Environmental Assessment—Lilly Dike is to reduce flood damages to homes, buildings, roads, bridges and other fixed improvements as well as agriculture. Community benefits will result in Lilly, Virginia through the installation of this Plan which is sponsored by the Shenandoah Valley Soil and Water Conservation District, the City of Harrisonburg and the Rockingham County Board of Supervisors.

Planned Action

Treatment includes the installation of approximately 7,200 feet of dike along Dry River at Lilly, Virginia, and approximately 600 feet of channel

enlargement near the highway 613 bridge.

Environmental Impacts

The proposed project will reduce flood damages.

In consultation with appropriate state and federal agencies, it has been determined that there are no endangered or threatened species in the project area.

An intensive archaeological investigation was conducted of the project area. Archival research, surface reconnaissance and shovel testing yielded no evidence of either prehistoric or historic remains within the project area.

The 600 foot segment of channel realignment and clearing near the highway 613 bridge will leave the resulting channel with similar characteristics as the existing channel.

The 7,200 foot dike will have no direct effect on normal stream conditions. The dike will serve to restrict flood flows on the south side of Dry River and will result in an insignificant increase in velocities during flood flows. The increase in velocities upstream of highway 613 will diminish quickly downstream of highway 613 since flow will be unrestricted.

It has been determined in consultation with the Virginia Department of Game and Inland Fisheries and other appropriate agencies that there will be no significant impact on fisheries.

There will be no significant impact on water quality. Local Erosion and Sedimentation Control Program guidelines will be followed during construction. Any impacts to water quality will therefore, be temporary in nature.

A small (500 square feet) area of wetland will be lost in the section of stream channel to be realigned. In consultation with other state and federal agencies, it has been determined this loss is insignificant.

Approximately 2.5 acres of forestland and 1.5 acres of grassland will be lost to dike construction. In addition, riparian habitat in the 600 foot channel section will be lost. The minor loss of forestland and grassland will not result in any significant loss of biological values in the project area. The portion of dike constructed in forest land will provide additional edge habitat and add diversity to the habitat.

Adverse Environmental Impacts Which Cannot Be Avoided

Installation of the proposed works of improvement will have short-term adverse impacts on noise, dust and exhaust levels. These levels will increase only during construction.

Alternatives

1. No action. With no action, there would be continued flooding damages in excess of $30,000. In addition, the disruption of services and community functions would continue during flood events.

2. The National Economic Development Plan (the recommended plan). This alternative would include approximately 7,200 feet of dike on the south side of Dry River and approximately 600 feet of channel realignment, clearing and snagging at the highway 613 bridge. Buildings subject to induced damages as a result of the dike will be protected by ring levees and pumps. Flap gates will be used to allow interior drainage to enter Dry River during low flow times and to exclude flood waters during times of high flows. The average annual cost and benefits are $16,855 and $30,145 respectively.

Short-term Uses vs. Long-term Productivity

The reduction in flood damages will improve the quality of life in this area.

Commitment of Resources

Labor, capital resources and energy used by these planned actions will be irretrievably and irreversibly committed.

Conclusion

This Watershed Plan has been planned and environmentally evaluated to ensure that effects are commensurate with the impacts described in this Finding of No Significant Impact. The Environmental Assessment file on the Lower North River—Lilly Dike is available for public inspection through the office of Mr. George C. Norris, State Conservationist, USDA, Soil Conservation Service, Federal Building, room 9201, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771–2455.

I have reviewed the Environmental Assessment and have determined this Watershed Plan will not result in significant impact on the human environment. I conclude that an Environmental Impact Statement is not necessary.

Dated: January 29, 1992.

George C. Norris,

State Conservationist.

[FR Doc. 92–3136 Filed 2–10–92; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 4 p.m. on Friday, February 28, 1992, at the Candler Building, 127 Peachtree Street, 11th Floor, Troutman Room, Atlanta, Georgia 30303. The purpose of this meeting is: (1) To discuss the status of the Commission; (2) to hear a report on civil rights progress and/or problems in the State; and (3) to discuss the adopted project for FY 1992.

Persons desiring additional information, or planning a presentation to the Committee should contact Georgia Chairperson, Dale M. Schwartz 404/657–8097 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730–2476, TDD 404/730–2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–3135 Filed 2–10–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Majid Modarressi; Order Denying Permission To Apply for or Use Export Licenses

In the matter of Majid Modarressi, 2935 Montana Avenue, Cincinnati, Ohio 45211, Respondent.

On November 7, 1988, Majid Modarressi was convicted in the United States District Court for the District of Massachusetts of violating section 38 of the Arms Export Control Act (currently codified at 22 U.S.C.A. 2778 (1991)) (AECA).

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app.

2401–2420 (1991)) (EAA),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of the EAA, or certain other provisions of the United States Code, including section 38 of the AECA, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person has any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating Section 38 of the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Modarressi's conviction for violating section 38 of the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Modarressi permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on November 7, 1998. I have also decided to revoke all export licenses issued pursuant to the EAA in which Modarressi had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered:*

I. All outstanding individual validated licenses in which Modarressi appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Modarressi's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until November 7, 1998, Majid Modarressi, 2935 Montana Avenue, Cincinnati, Ohio, 45211, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Modarressi by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until November 7, 1998.

VI. A copy of this Order shall be delivered to Modarressi. This Order shall be published in the **Federal Register.**

Dated: February 3, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92–3133 Filed 2–10–92; 8:45 am]

BILLING CODE 3510–DT–M

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

[Docket No. 911201–1301]

Foreign Availability Determination: High Precision Bearings

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of positive determination.

SUMMARY: The Department of Commerce has determined that foreign availability of certain high precision bearings controlled under ECCN 1371A of the former Commodity Control List exists to controlled destinations. High precision bearings are currently controlled principally under ECCN 2A01 of the new Commerce Control List (CCL) (15 CFR 799.1, Supp. 1).

FOR FURTHER INFORMATION CONTACT: Steven Goldman, Director, Office of Foreign Availability, room 1087, Department of Commerce, Washington, DC 20230; Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

Part 791 of the EAR (15 CFR part 730 *et seq.*) establishes the procedures and criteria for determining the foreign availability of goods and technology whose export is controlled for national security purposes. The Secretary of

Commerce or his designee determines whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such countries from a foreign source in quantities sufficient to render the controls ineffective in achieving their purpose.

On June 8, 1987, OFA initiated a foreign availability assessment of high precision bearings to controlled destinations. This item was controlled under ECCN 1371A of the former Commodity Control List. High precision bearings are currently controlled under ECCN 2A01 of the new Commerce Control List and under certain other ECCNs.

OFA provided its assessment and recommendation to the Office of the Deputy Assistant Secretary for Export Administration. The Deputy Assistant Secretary has considered the assessment and other relevant information and has determined that foreign availability to controlled destinations exists within the meaning of section 791 of the EAR for certain high precision bearings. Specific bearings for which foreign availability was found include: Ball and roller bearings having an inner bore diameter of 10mm or less and tolerances of ABEC 5, RBEC 5 (or national equivalents) made from high speed tool steels, and/or manufactured for normal operating temperatures above 302 °F (150 °C); and ball or roller bearings having tolerances of ABEC 7, RBEC 7 made from steel alloys and other materials except Monel metal, beryllium, metalloids, ceramics and sintered metal composites. All interested government agencies, including the Departments of State and Defense, were provided an opportunity to review and comment on the assessment and determination.

In the fall of 1990, the United States incorporated OFA's assessment and recommendation into the USG Core List proposal to the COCOM allies. The COCOM allies accepted the USG proposal. The removal of national security based licensing requirements from certain high precision bearings, therefore, was incorporated into the regulatory changes to the U.S. Commerce Control List implementing the new COCOM Core List. These categories of bearings remain controlled, however for foreign policy reasons.

If OFA receives new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: February 5, 1992.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 92-3154 Filed 2-10-92; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 911225-1325]

Foreign Availability Determination: Hydroxyl Terminated Polybutadiene Resins

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of positive determination.

SUMMARY: The Department of Commerce has determined that foreign availability of hydroxyl terminated polybutadiene resins and manufactures controlled under ECCN 1746A of the former Commodity Control List exists to controlled destinations. Hydroxyl terminated polybutadiene resins and manufactures are currently controlled under ECCN 1C31B of the Commerce Control List (CCL) (15 CFR 799.1, Supp. 1).

FOR FURTHER INFORMATION CONTACT: Steven C. Goldman, Director, Office of Foreign Availability, room 1087, Department of Commerce, Washington, DC 20230; Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

Part 791 of the Export Administration Regulations (EAR) (15 CFR part 730 *et seq.*) establishes the procedures and criteria for determining the foreign availability of goods and technology whose export is controlled for national security purposes. The Secretary of Commerce or his designee determines whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports on an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such countries from a foreign source in quantities sufficient to render the controls ineffective in achieving their purpose.

On June 8, 1987, OFA initiated a foreign availability assessment of hydroxyl terminated polybutadiene resins, a binder for solid rocket propellants, and manufactures thereof, to controlled destinations.

OFA provided its assessment and recommendation to the Deputy Assistant Secretary for Export Administration. The Deputy Assistant Secretary has considered the assessment and other relevant information and has determined that foreign availability to controlled destinations exists within the meaning of Section 791 of the EAR for hydroxyl terminated polybutadiene resins. This determination does not apply to those hydroxyl terminated polybutadiene resins or equivalents specifically formulated and designated as military grades. All interested government agencies, including the Departments of State and Defense, were provided an opportunity to review and comment on the assessment and determination.

In the Fall of 1990, the United States incorporated OFA's assessment and recommendations into the USG Core List proposal to the COCOM allies. COCOM accepted the U.S. proposal. The removal of national security based licensing requirements on hydroxyl terminated polybutadiene, therefore, was incorporated into the regulatory changes to the U.S. Commerce Control List implementing the new COCOM Core List. This item remains controlled for foreign policy reasons under ECCN 1C31B of the CCL.

If OFA receives new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: February 5, 1992.

James M. LeMunyon.

Deputy Assistant Secretary for Export Administration.

[FR Doc. 92-3153 Filed 2-10-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-588-809]

Certain Small Business Telephone Systems and Subassemblies Thereof From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 13, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain small business telephone systems and subassemblies thereof from Japan. The review covers one manufacturer/exporter of this merchandise to the United States for the period August 3, 1989 through November 30, 1990.

We gave interested parties an opportunity to comment on the preliminary results. At the request of Iwatsu Electric Company, Ltd. (Iwatsu) and American Telephone and Telegraph (AT&T), we held a public hearing on January 9, 1992. Based on our analysis of comments received, issues raised at the public hearing, and the correction of certain clerical errors, the final results of review differ from the preliminary results of review.

EFFECTIVE DATE: February 11, 1992.

FOR FURTHER INFORMATION CONTACT: Timothy A. Volker or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-8120.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 57609) the preliminary results of its administrative review of the antidumping duty order on certain small business telephone systems and subassemblies thereof from Japan (54 FR 50789, December 11, 1989). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22 (1991).

Scope of the Review

Imports covered by the review are shipments of certain small business telephone systems and subassemblies thereof (SBTS), currently classifiable under Harmonized Tariff Schedule item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015.

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing, hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2,400 watts into output power of not more than 1,800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from the scope of this antidumping duty order: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.22(c) of the Commerce Regulations. We received comments from Iwatsu and AT&T, and, at the request of both parties, held a public hearing on January 9, 1992.

We have corrected any clerical errors noted by the respondents, and have addressed them specifically in this notice.

Comment 1: Iwatsu contends that the Department should have offset repair expenses by revenues obtained in performing repair services. Petitioner contends that the Department's refusal to offset warranty expenses with repair revenues was proper because Iwatsu cannot attribute repair revenues to specific products, and Iwatsu's repair revenues include revenues that are unrelated to warranty expenses.

Department's Position: We disagree with Iwatsu. The Department has disallowed Iwatsu's repair department revenues because Iwatsu could not specifically identify what portion, if any, of repair department revenue was attributable to merchandise subject to this review.

Comment 2: Iwatsu contends that the Department should have used third-country sales instead of constructed value in those situations where there were no sales of certain models in the home market. Petitioner contends that the Department's use of constructed value rather than third-country sales is appropriate.

Department's Position: We disagree with Iwatsu and agree with petitioner. Section 773(a)(1) of the Act states that foreign market value (FMV) "shall be the price * * * at which such or similar merchandise is sold * * * in the principal markets of the country from which exported" unless "the quantity sold for home consumption is so small in relation to the quantities sold * * * to countries other than the United States as to form an inadequate basis for comparison." The determination of whether home market sales are so small as to be inadequate is commonly referred to as the "viability test."

The viability test calls for a comparison of the quantity of sales of such or similar merchandise in the home market with the quantity sold to third countries. If that ratio is too small (normally, below five percent), then the Department considers home market sales to constitute an "inadequate basis for comparison" (i.e., the home market is not viable) and calculates FMV based on sales to a third country or based on constructed value. See, 19 CFR 353.48. If the home market is determined to be viable, in those situations where there are no home market sales of a particular model, it has traditionally been our practice to base FMV on constructed value for that particular model. See our response to Hosiden Comment 1 in High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition (56 FR 32376, July 16, 1991.) See also our response to Comment 1 Dry Cleaning Machinery from Germany, Final Results of Antidumping Duty Administrative Review (56 FR 66838, December 26, 1991.)

We found Iwatsu's home market to be viable. Accordingly, in those situations where Iwatsu had no home market sales of a particular model, even though there may have been third-country sales, we used constructed value instead of the third-country sales.

Comment 3: Iwatsu contends that the Department should have treated certain home market advertising expenses and commissions as direct expenses rather than indirect expenses.

Department's Position: We disagree with Iwatsu. Iwatsu did not adequately demonstrate that its advertising expenses and commissions were directly attributable to products covered by this review. Although Iwatsu provided two examples of advertisements, Iwatsu did not translate the advertisements, nor did it indicate the medium *(e.g.*, trade journals, magazines) in which the advertisements were placed. Hence, the advertising examples Iwatsu provided did not adequately demonstrate that they were directly attributable to products covered by this review, or that such advertisements were aimed at end users.

Comment 4: Iwatsu contends that the Department incorrectly disregarded Iwatsu's home market sales to related parties without first determining whether those sales were at arm's length. Citing Gray Portland Cement and Clinker From Japan (56 FR 12156, 12167, March 23, 1991), Iwatsu contends that if a respondent reports sales to related parties it is incumbent upon the Department to conduct a test to determine whether those sales are at arm's length.

Petitioner points out that the Department's regulations do not require it to consider sales to related parties, even when prices for such sales are comparable to sales prices to unrelated parties. Moreover, petitioner contends that there is no compelling reason for the Department to use Iwatsu's sales to related parties because such sales are not as reliable as sales to unrelated customers, nor are related party sales needed in order for the home market to be viable.

Department's Position: We disagree with Iwatsu and agree with petitioner. Transactions between related parties are ordinarily not used to calculate foreign market value. See our response to Comment 2 in Fishnetting of Man-Made Fibers From Japan: Final Results of Antidumping Duty Administrative Review (55 FR 34042, 34043, August 21, 1990.) In accordance with 19 CFR 353.45(a), the Department uses sales to related parties only if it is satisfied that such sales prices are "comparable" to sales prices to unrelated parties. It is incumbent on the respondent to demonstrate, through a detailed analysis, that related party sales are at arm's length since that is the party making the claim. For example, in Fishnetting From Japan, the Department stated that "it (the respondent) wanted the Department to use these (related party) transactions for FMV purposes, they clearly had the burden first to claim, then prove, that sales * * * were at arm's length." See our response to Comment 4 in Fishnetting of Man-Made Fibers From Japan: Final Results of Antidumping Duty Administrative Review (55 FR 34042, 34043, August 21, 1990.) See also our response to Comment 28 in Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 18992, 19090, May 3, 1989.)

Iwatsu's claim that related party sales should be used in the Department's analysis was first made in its pre-hearing brief; at no time did Iwatsu provide an analysis demonstrating that its home market sales to related parties were made at arm's length. In accordance with our regulations (19 CFR 353.31), we do not accept unsolicited factual information after the time limits specified in our regulations. To the extent that we deem unsolicited information after these dates to be new factual information, whether characterized as supplementing, explaining, or supporting previously submitted data or information, and whether submitted in case briefs, at a hearing, or otherwise, it is untimely and may not be considered in this review.

Iwatsu has cited Gray Portland Cement which states that "(the respondent) sustained its burden to produce a detailed analysis of prices to related and unrelated parties when it submitted its home market database which clearly indicates gross prices, and adjustments, to related and unrelated parties alike." Iwatsu misconstrued this statement to suggest that the mere submission of data accompanying an assertion of comparability constitutes a "detailed analysis." This is not the case. In order for us to analyze whether home market sales to related parties are at arm's length, a respondent must first (1) make a timely claim (e.g., in its questionnaire response) that sales to related parties are at arm's length and should therefore be included in the Department's analysis, and; (2) demonstrate through a comprehensive analysis that such sales are at arm's length. Once a respondent has fulfilled these criteria, we would then examine the respondent's claim and analysis to determine whether sales to related parties should be incorporated into our analysis. The mere submission of data on sales to related parties does not constitute an analysis of the data. Therefore, although Iwatsu identified on its computer tape which sales were made to related and unrelated parties, Iwatsu did not even attempt to demonstrate that sales prices to related parties were at arm's length, or that discounts and rebates were granted equally to related and unrelated parties. In any event, we note that the data submitted by Iwatsu indicate that a significant number of Iwatsu's sales to related parties were not made at arm's length. Accordingly, we did not use Iwatsu's home market sales to related parties in our analysis.

Comment 5: Iwatsu contends that the Department should have used weight-average costs from the entire review period in its constructed value calculations, instead of costs from the second half of 1989. Petitioner contends that the Department's action was appropriate, given that the vast majority of Iwatsu's U.S. sales occurred in the first half of 1989.

Department's Position: We agree, in part, with Iwatsu. The period of review covers 15 months. In accordance with its accounting records, the costs Iwatsu reported fell into four six-month periods. The majority of costs for two of the six-month periods fell outside the period of review; costs from the other two six-

month periods were entirely within the period of review. Accordingly, in our constructed value calculations for the final results we have weight-averaged the cost of manufacture, as well as the selling, general, and administrative expenses from the two six-month periods which fell entirely within the period of review.

Comment 6: Iwatsu contends that the Department incorrectly assigned cost of manufacturing data for three of its products.

Department's Position: We agree with Iwatsu and have made the appropriate changes.

Comment 7: Iwatsu contends that cash discounts and non-competition rebates should be deducted from FMV.

Department's Position: We agree, in part with Iwatsu. For these final results, we deducted cash discounts and non-competition rebates from home market price before comparing the price to U.S. price. However, we have not deducted the rebates reported on Iwatsu's computer tape as VARIANCH, because Iwatsu did not provide an explanation for that variable in either its original or supplemental questionnaire responses.

Comment 8: Iwatsu contends that the Department should disregard two data entry errors reported on Iwatsu's computer tape which artifically increase Iwatsu's dumping margin.

Department's Position: We agree with Iwatsu and have made the changes for the final results.

Comment 9: Iwatsu contends that the Department incorrectly double-counted certain Iwatsu R&D expenses in the constructed value calculation.

Department's Position: We agree with Iwatsu and have made the change for the final results.

Final Results of the Review

As a result of comments received, we have revised our preliminary results of Iwatsu, and we determine the margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Iwatsu Electric Co., Ltd.....	08/03/89–11/30/90	37.38

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of small business telephone systems and subassemblies from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or, if not covered in this review, the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm will be the "All Others" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1991).

Dated: January 31, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-3204 Filed 2-10-92, 8:45 am]

BILLING CODE 3510-DS-M

[A-588-604]

Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 6, 1991, the Department of Commerce published the preliminary results of its 1988–89 administrative review of the antidumping duty order on tapered roller bearings, finished and unfinished, and parts thereof, from Japan. The review covers four manufacturers/exporters of this merchandise to the United States during the period October 1, 1988, through September 30, 1989.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted the margins for some companies.

EFFECTIVE DATE: February 11, 1992.

FOR FURTHER INFORMATION CONTACT: Chip Hayes, Laurel LaCivita, or Paul McGarr, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1991, the Department of Commerce (the Department) published the preliminary results of this administrative review of the antidumping duty order (52 FR 37352, October 6, 1987) on tapered roller bearings, finished and unfinished, and parts thereof, from Japan, in the **Federal Register** (56 FR 41508). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are sales or entries of tapered roller bearings (TRBs), and parts thereof, which are flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the outstanding dumping finding covering certain tapered roller bearings from Japan, four inches or less in outside diameter, and certain components thereof (A–588–054) (the 1976 finding), are not included within the scope of this order. However, this order includes all tapered roller bearings, and parts thereof, as described above, that are manufactured by NTN Toyo Bearing Co., Ltd. (NTN). During the review period, such merchandise was classifiable under item numbers 680.30,

680.39, 681.10, and 692.32 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.99.30, 8483.20.40, 8482.20.00, 8483.20.80, 8482.91.00, 8483.30.80, 8483.90.20, 8483.90.30, and 8383.90.80. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers TRB sales by Koyo Seiko, K.K. (Koyo), Nippon Seiko K.K. (NSK) Nachi Fujikoshi Corporation (Nachi), and entries of merchandise manufactured by NTN and entered by Caterpillar Inc. during the period October 1, 1988, through September 30, 1989.

ANALYSIS OF COMMENTS RECEIVED

We gave interested parties an opportunity to comment on the preliminary results. At the request of the Timken Company (Timken), the petitioner in this proceeding, Koyo, NSK, and NTN, respondents, and Caterpillar, Inc. (Caterpillar), an importer of the subject merchandise, we held a hearing on May 24, 1991. We received case and rebuttal briefs from all interested parties except Nachi.

Comments are addressed in the following order:

1. Model Match, Difference in Merchandise Adjustments, and Set Splitting
2. Clerical Errors, Programming Errors, and Use of Best Information Available
3. Packing and Movement
4. Adjustments to Foreign Market Value
5. Adjustments to U.S. Price
6. Cost of Production
7. Cost Test Methodology
8. Miscellaneous Issues Regarding Level of Trade, Related Parties, Sample Sales, Contemporaneity, Foreign Trade Zones, Consumption Tax, Cash Deposits, and Date of Sale

Comments Regarding Model Match, Difference in Merchandise Adjustments, and Set Splitting

Comment 1: Timken argues that the Department should use the "greatest single deviation" methodology, rather than the "sum of the deviations methodology," to determine model match comparisons. It argues that the greatest single deviation methodology closely approximates the concerns of customers, who evaluate each criterion independently to ensure that the application requirements for size and performance are properly met. Timken also believes that there are non-linear interrelationships between the criterion with the largest deviation and the rest of the criteria, so that a 10 percent change in one performance factor may lead to a 30 percent change in the performance characteristics of the other factors. Timken argues that this method does not give undue weight to any single factor, since the factor that deviates the most will be more important to the design engineer than lesser changes in multiple other factors. In addition, Timken notes that, unlike Koyo, it has not requested that a 10 percent cap be imposed on the deviation of each factor, and that Timken has provided a tie breaker for the instances where there is more than one "most similar" choice for each U.S. model.

Koyo argues that the Department should use the sum of the deviations methodology employing a 10 percent cap on each criterion in order to determine the most similar model. Koyo argues that models which deviate by more than 10 percent in any one criterion are not comparable under the requirement of the statute.

Department's Position: We are satisfied that the sum of the deviations methodology most accurately determines the most similar model sold in the home market. We have used the sum of the deviations methodology for model match comparisons in all of the final results of review concerning certain tapered roller bearings from Japan, four inches or less in outside diameter, and certain components thereof (A–588–054) (the 1976 finding) (see 55 FR 22369, June 1, 1990 (1974–1980 review), 55 FR 38720, September 20, 1990, (the 1986–1987 review), 56 FR 38721, June 3, 1991 (the 1987–1988 review), 56 FR 65228, December 16, 1991 (the 1988–1989 review)). In addition, this method has been upheld by the Court of International Trade (CIT): *Timken* v. *United States*, Slip. Op 84–63 (7 CIT 319) (June 5, 1984) (*Timken*), *Timken* v. *United States*, 630 F. Supp. 1327 (CIT 1986) (*Timken I*), and *Timken* v. *United States*, 673 F. Supp. 495 (CIT 1987) (*Timken II*), and used for the final results of review of this 1987 order: 56 FR 41508, August 21, 1991 (the 1987–1988 review). Therefore, for the reasons explained in those notices, we have not changed our methodology for this review.

Comment 2: NTN posits that the Department should not split sales of sets in the home market to derive a foreign market value (FMV) for cups and cones since the statute does not allow the creation of fictitious sales to calculate FMV.

Department's Position: We disagree. Our set-splitting methodology is used to apportion the price of a set to its component parts based on a ratio of the cost of production of each part to the cost of production of the set. Set splitting was specifically upheld by the CIT (see *Timken II* at 504). At no time do we create a fictitious sale; we allot portions of the price of actual sales to their component parts.

Comment 3: Timken states that NTN submitted cost of manufacture information for only similar models submitted in its model match concordance, rather than on all home market models. Timken asserts that the Department should apply the best information otherwise available for models it determines to be similar, but for which no difference in merchandise costs were submitted.

Department's Position: We agree. As explained in our response to Comment 5, for any home market models that the Department chose as physically similar, but for which no difference-in-merchandise costs were submitted, we set the difference in merchandise adjustment equal to 20 percent of the U.S. cost of manufacture as the best information available.

Comment 4: NSK argues that the Department should incorporate language into its model match programming that precludes normal precision bearings from being compared to high precision bearings.

Department's Position: We disagree. The physical criteria pertinent to model match selection have been well established in previous segments of this proceeding. NSK has not provided evidence that the chosen physical criteria and/or the standard for the comparable value of merchandise are inadequate.

Comment 5: Timken states that, in instances where NSK has not reported a variable cost of manufacture for U.S. models to calculate a difference in merchandise adjustment, the Department should use the maximum variable cost of manufacture for any U.S. model as the best information available.

Department's Position: We disagree. Because we consider only home market merchandise whose variable costs of manufacture are within 20 percent of those of U.S. merchandise to be of comparable value, we have calculated a difference in merchandise adjustment equal to 20 percent of home market costs as the best information available for U.S. models with no reported variable costs of manufacture.

Comments Regarding Clerical Errors, Programming Errors, and the Use of Best Information Available

Comment 6: Timken claims that the Department made programming errors in

the NTN program for model reduction and the attachment of the correct production time periods in the cost test.

Department's Position: We agree and have corrected the programming for the final results of review.

Comment 7: Timken contends that NTN's sales, cost, and model match data are incomplete and should be rejected in favor of best information otherwise available. NTN avers that the Department either did not use all of its submitted information in the preliminary analysis or did not request necessary information for the analysis. Thus the Department is obliged to exhaust these sources before resorting to best information available.

Department's Position: We have incorporated additional data from NTN's original and supplemental responses in our final results of review. We requested and received adequate constructed value information from NTN, and we have used that data in our results.

Comment 8: Timken claims that, because of deficiencies in NTN's response for this review and because the response was not verified by the Department, the response must be rejected in favor of the best information otherwise available for NTN's sales.

Department's Position: We disagree. Section 776(b)(3) of the Tariff Act states that the administering authority shall verify all information relied upon in making a review and determination under section 751(a) if verification is timely requested and no verification was made during the two immediately preceding reviews and determination, except where good cause is shown. This administrative review is the second review of the antidumping duty order in this case. Thus, the verification requirement of section 776(b)(3) of the Tariff Act does not apply. In addition, we are satisfied that NTN's original and supplemental responses are adequate to conduct an analysis of sales.

Comment 9: Koyo argues that the Department's calculations contain the following clerical errors: (1) The value of net price and other variables for split cones were erroneously defined as a percentage of the cup price rather than as a percentage of the set price; (2) the value of the indirect selling expenses incurred in the home market for U.S. exports were erroneously included in the direct selling expenses rather than the indirect selling expenses for exporter's-sales-price (ESP) sales; (3) the cost of packing in Japan and the cost of reboxing in the United States were omitted from the calculation of the total cost of manufacturing used in the calculation of further manufacturing and the allocation of profit; and (4) there was no circumstance of sale adjustment for direct selling expenses when U.S. sales were compared to constructed value.

Department's Position: We agree that the first three items noted above were made in error and have corrected them for the final results of review. However, we disagree that our decision not to make a circumstance-of-sale adjustment for the sales compared to constructed value constitutes a clerical error. In this instance, Koyo did not quantify the amount of direct selling expenses attributable to commissions and credit in its calculation of constructed value. Therefore, we did not make an adjustment to constructed value for direct selling expenses. Instead, we added total direct selling expenses to indirect selling expenses and included them in the ESP cap.

Comment 10: NSK contends that the Department made the following clerical or programming errors: (1) The Department's program logic misclassifies the designation of certain cups and cones; (2) the Department used the wrong variable in the U.S. sales database for unit price; (3) the Department used the incorrect cost database for costs of manufacturing for U.S. models; (4) the Department incorrectly excluded U.S. bearings with a Y factor equal to zero from the model match programming; (5) the Department drew elements of constructed value from the wrong financial statement; (6) the Department incorrectly used the home market credit expense for the first half of the period of review (POR) as the expense for the entire POR.

Department's Position: We agree and have amended our programming for the final results of review.

Comments Regarding Movement and Packing Expenses

Comment 11: Timken alleges that, since Koyo's U.S. inland freight adjustment is based on the sales value of bearings, not weight, the freight figure is inherently distortive. Timken claims that Koyo's calculation results in a misallocation of freight expenses between sales at different levels of trade. Timken also notes that the Department has a stated preference for an allocation of freight based on the unit weight of the individual products (Final Determination of Sales at Less Than Fair Value, Antifriction Bearings from Various Countries, 54 FR 19044, May 3, 1989). Timken also alleges that Koyo mixed the freight costs it incurred with those incurred by its related distributors. Timken claims that the freight costs for shipping from the related distributors' warehouses must be different than the freight costs of shipping from Koyo's warehouses. Therefore, Timken charges that Koyo's reported freight expenses are inconsistent with actual experience so that the Department should not make an adjustment.

Timken also claims that NSK's foreign inland freight and foreign inland insurance, which were based on value rather than weight, are distortive. Petitioner believes that NSK's highest reported freight and insurance charges should be used as the best information available.

Department's Position: We agree that allocations of freight costs by volume, weight, distance, or a combination of these, are preferable to allocations based on sales value. However, Koyo does not maintain and cannot separate its records by volume, weight or destination. Therefore, since we have no evidence on the record that Koyo's sales prices are distorted between levels of trade or relatedness, we determined that the allocation of freight expense based on sales value is reasonable (see Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings Four Inches or Less in Outside Diameter from Japan, 55 FR 22372, June 1, 1990 (the 1974–1980 review), 56 FR 38721, June 3, 1991 (the 1987–1988 review), 56 FR 65228, December 16, 1991 (the 1988–1989 review); and Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 56 FR 41508, August 21, 1991 (the 1987–1988 review)).

The Department also verified NSK's movement expenses and determined that the allocation based on value was reasonable.

Comment 12: Timken claims that NTN's entire home market inland freight adjustment should be disallowed because NTN's use of an allocation based on value rather than volume or weight is distortive and because NTN failed to separate pre- and post-sale freight costs. NTN maintains that the Department should use the entire home market freight expense to adjust FMV rather than limit the adjustment to the cost incurred in shipping the merchandise to the unrelated customer.

Department's Position: We disagree with petitioner that NTN's allocation technique is distortive (see our response to Comment 11). In the preliminary results the Department treated pre-sale movement expenses incurred on home market sales as either production costs or indirect selling expenses. However, we have reconsidered our treatment of

these expenses, since no distinction is made between pre-sale and post-sale movement charges in calculating U.S. price (USP). To ensure an equitable comparison, we have deducted all movement charges from FMV. (See A-588-054, the 1987-1988 review.)

Comment 13: NSK states that the Department must change the allocation factor for U.S. freight out based on information found at verification.

Department's Position: We agree and have made the change for the final results of review.

Comments Regarding Adjustments to Foreign Market Value

Comment 14: Timken argues that the Department should not adjust NTN's FMV for inventory carrying cost, since this type of financing expense is not incurred on behalf of, or related to, the sale to the purchaser in the home market.

Department's Position: This issue is moot. Since we are analyzing only purchase price sales by NTN, no adjustments for indirect expenses are appropriate. Therefore, we did not make any adjustments for inventory carrying costs for the final results of review.

Comment 15: Timken argues that the Department should not adjust FMV for post-sale rebates and discounts that Koyo and NSK gave to its home market customers, since Koyo and NSK failed to present any evidence that the rebates and discounts were part of a sales contract or were directly related to sales of the merchandise within the meaning of 19 CFR 353.56(a). Timken asserts that respondents must demonstrate that customers were aware at the time of purchase that such rebates and discounts might be granted, and that the adjustments are tied to specific sales. Timken alleges that Koyo has not demonstrated that the prices for which post-sale price adjustments were granted were not actually modified, rather than fixed, after the merchandise was shipped. Timken also claims that the Department should reject NTN's after-sale price adjustments as inadequately explained. Petitioner states that NTN has failed to establish that these adjustments are directly related to sales under review.

Department's Position: We disagree. The record demonstrates that Koyo's post-sale price adjustments are an established and accepted commercial practice in the TRB industry (see Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings Four Inches or Less in Outside Diameter from Japan, 56 FR 38721, June 3, 1991 and Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 56 FR 41508, August 21, 1991). We have examined the information provided in the questionnaire response and determined that these price adjustments are made on a customer-specific basis, but cannot be directly tied to the sale for which they were granted. Therefore, we have classified these post-sale price adjustments as indirect, rather than direct, selling expenses and deducted them from FMV. Therefore, we have not changed our calculations for the final results of review.

NSK reported a variety of adjustments labeled as returns, rebates, commissions, or discounts. Respondent granted and reported post sale price adjustments on a customer- and product-specific basis. The Department verified that NSK's allocation methodology for returns accurately reflected the returns on specific transactions. NSK's distributor incentive program rebated, and allocated, a standard proportion based on all products sold by qualifying distributors. Consequently, we have classified these as direct adjustments to price. However, NSK was not able to demonstrate that the lump-sum post-sale price adjustment (which is distributor-specific, but not a straight percentage of all sales), and commissions (which are also customer-specific only, but also not a straight percentage of all sales) applied to specific sales of covered products. This rebate and these commissions were not granted as a straight percentage of each sale so that, even when reported on a customer-specific basis, a misallocation of the expense may occur between covered and non-covered merchandise. Therefore, we have classified these expenses as indirect selling expenses for the final results of review. We calculated the amount of the adjustment to the home market price for the early payment discounts as if they were indirect selling expenses, since NSK was unable to provide information that ties the early payment discount directly to specific sales of in-scope merchandise. As noted in previous reviews, in instances where a respondent fails to provide sufficient information to support its claim that a price adjustment can be tied to a specific sale in the home market, we make the adverse assumption and calculate the price adjustment in the same manner as we would calculate all indirect selling expenses.

We are also satisfied that there is enough information in NTN's responses to demonstrate that these adjustments are the same as those verified and accepted during the investigation of this case, and that the adjustments are attributable to sales of TRBs.

Comment 16: Timken argues that the Department should not accept Koyo's reported home market credit expense because Koyo based its calculation on the number of days for which credit was extended for its major customers, which may not be representative of all of its sales. Timken also argues that NSK's credit expense is problematic in that the basis of the expense, commercial borrowing or promissory notes, is not clear, and the adjustment should therefore be denied.

Department's Position: We agree that respondents bear the burden of reporting the full number of days that credit is extended to all customers. We view the number of customers Koyo chose to use in its credit calculation as acceptable since it accounts for the vast majority of its home market sales of covered merchandise during the period of review. Given the massive number of transactions and the fact that respondent reported the number of credit days outstanding on a customer-specific basis, we accepted respondent's methodology and adjusted FMV for the number of credit days reported by respondent (see Final Results of Antidumping Duty Administrative Review; Antifriction Bearings from the Federal Republic of Germany, et al. (56 FR 31721, July 11, 1991), Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, (56 FR 41508, August 21, 1991) and Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan, (56 FR 65228, December 16, 1991)).

We also verified NSK's calculation of its credit expense, including discounted notes, and found no discrepancies. Therefore, we accepted the adjustment.

Comment 17: Timken avers that NTN's interest rate for calculating credit costs should be recalculated without any adjustment for compensating deposits. NTN contends that factoring for compensating deposits is correct, but if respondent's argument is to be rejected, the Department should use NTN's nominal interest rate on loans.

Department's Position: We agree with petitioner that there is inadequate justification to accept NTN's credit cost calculation based on compensating deposits. In our preliminary results we recalculated NTN's credit costs based on the firm's net interest expense (interest expense minus interest income) as most representative of the firm's

internal cost of funds. Because only purchase price sales by NTN are being analyzed in this review, the recalculated interest expense forms the basis of the credit cost adjustment for both home market and U.S. sales. We consider this the proper methodology for the final results (see Final Results of Antidumping Duty Administrative Review, Antifriction Bearings from the Federal Republic of Germany, et al., 56 FR 31721, July 11, 1991).

Comment 18: Koyo argues that, in its calculation of the ESP offset, the Department included commissions in indirect selling expenses when commissions were paid in one market but not in the other market. Koyo further notes that, if the resulting combination of home market commissions and indirect selling expenses exceeds the U.S. indirect selling expenses, the Department limits the home market deductions from FMV by the amount of the U.S. selling expenses, thereby depriving Koyo of the full amount of its circumstance-of-sale adjustment for commissions when home market indirect selling expenses plus commissions were greater than the indirect selling expenses in the United States.

Department's Position: We disagree that we have included home market commissions in indirect selling expenses in the calculation of the ESP offset. We have classified commissions paid to unrelated parties for home market sales of the subject merchandise as direct selling expenses which qualify for a circumstance-of-sale adjustment.

However, we agree with Koyo that the ESP offset was inappropriately calculated in the instance in which a commission existed in one market and not another. Therefore, we have changed our calculations to provide for a separate calculation of the circumstance-of-sale-adjustment for commissions and the ESP offset (see Final Results of Antidumping Duty Review, Certain Fresh Cut Flowers From Mexico (56 FR 1794, January 17, 1991) Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 56 FR 41508, August 21, 1991) and Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan, 56 FR 65228, December 16, 1991).

Comment 19: Timken claims that, because NSK is unable to tie technical service expenses to specific sales, the adjustment should be denied.

Department's Position: NSK combined sales branch expenses and certain general and administrative expenses to derive a technical service expense. None of these expenses were tied directly to sales of TRBs, but were allocated to TRBs. The Department verified that allocation and found no discrepancies. Consequently, we have treated the adjustment as an indirect expense.

Comment 20: Timken argues that the Department should classify Koyo's warranty as an indirect selling expense since Koyo's adjustment is based upon credit notes issued for all bearings sold during the period of review. Timken maintains that since Koyo did not demonstrate that the incidence of such costs is the same for covered and non-covered bearings, it is inappropriate to consider warranty expense a direct selling expense in the home market.

Department's Position: We agree. Since Koyo's home market warranty expenses could not be directly related to merchandise covered by the scope of the order, we reclassified warranty expenses as indirect selling expenses for the purposes of determining FMV in the final results of review.

Comment 21: Timken contends that the Department should eliminate any administrative expenses included in Koyo's listing of indirect selling expenses from the ESP offset. Timken notes that expenses such as depreciation, salaries and wages do not qualify as deductions if they are not itemized or linked directly to the sales department and to selling activities.

Department's Position: We agree with petitioner that expenses which are not itemized and linked to the sales department are not classified as indirect selling expenses. However, we have reviewed the information provided in the questionnaire response and have determined that Koyo properly classified the expenses reported by its sales department and its related distributors as indirect selling expenses. Therefore, we have not changed this calculation for the final results of review.

Comments Regarding Adjustments to U.S. Price

Comment 22: Timken contends that the Department should reject Koyo's calculation of credit expenses in the United States since Koyo based its calculation on the number of days for which Koyo extended credit to its major customers, which may not be representative of all of its sales.

Department's Position: We disagree. As explained in our final results of review on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al. (56 FR 31721, July 11, 1991) Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 56 FR 41508, August 21, 1991) and Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan, 56 FR 65228, December 16, 1991), the Department prefers to have credit calculated on a transaction-by-transaction basis. However, as we noted in Comment 17, we view the number of customers Koyo chose to use in its credit calculation as acceptable since it accounts for the vast majority of its U.S. sales of covered merchandise during the period of review. Therefore, we have not changed our calculations for the final results of review.

Comment 23: Timken claims that the source of NSK's U.S. credit expense is unclear and that NSK's adjusted credit expense for transactions with post sale price adjustments understates credit costs. NSK states that the Department should accept its reported adjustment to its credit expense for sales that had post sale price adjustments before receipt of payment.

Department's Position: The Department verified that NSK's credit expense was based on its own short-term commercial borrowing experience. We also verified that the adjustment to the credit expense was accurately reported and reasonable. Therefore, we have accepted NSK's credit adjustment.

Comment 24: Timken argues that the Department should classify the technical service expenses incurred in the United States as direct selling expenses since engineering support provided by a parent corporation to its subsidiary's customers is a direct selling expense in the United States. Timken further argues that Koyo should apply the technical service expenses incurred in the U.S. market to original-equipment-manufacturer (OEM) sales rather than to all sales of covered products during the review period, since it is unlikely that Koyo provides technical services to aftermarket customers.

Department's Position: We disagree. We examined the information provided in the questionnaire response and found Koyo's calculation to be reasonable and accurate. We did not see any evidence that technical services were provided by the parent corporation to its subsidiary's customers. Therefore, we did not change our calculations for the final results of review.

Comment 25: Timken argues that the Department should classify discounts

and rebates in the United States as direct selling expenses under the presumption that all U.S. selling expenses are direct selling expenses unless proven otherwise.

Department's Position: Timken is correct in its assertion that the burden is placed on the respondent to prove that U.S. selling expenses are indirect and home market selling expenses are direct. We classify expenses in each market based on the information submitted during the review and on the Department's verification reports. In instances where a respondent fails to provide sufficient information to support its claim that an adjustment is directly related to a sale in the home market, we will generally reclassify the adjustment as indirect. Likewise, when a respondent fails to provide information to support its claim that an adjustment is indirect in the U.S. market, we generally reclassify the adjustment as direct. Since Koyo was not able to tie its reported discounts and rebates in the United States to sales of covered merchandise, we classified them as direct selling expenses for the purpose of calculating USP.

Comment 26: Petitioner avers that NTN's interest rate for calculating credit costs on purchase price sales should be calculated without any adjustment for compensating deposits. NTN contends that factoring for compensating deposits is correct, but if respondent's argument is to be rejected, the Department should use NTN's nominal interest rate on loans.

Department's Position: We agree with petitioner that there is inadequate justification to accept NTN's credit cost calculation based on compensating deposits. In our preliminary results we recalculated NTN's credit costs based on the firm's net interest expense (interest expense minus interest income) as most representative of the firm's internal cost of funds. Because only purchase price sales by NTN are being analyzed in this review, the recalculated interest expense forms the basis of the credit cost adjustment for both home market and U.S. sales. We consider this the proper methodology for the final results. (See Final Results of Antidumping Duty Administrative Review, Antifriction Bearings from the Federal Republic of Germany et al., 56 FR 31721, July 11, 1991.)

Comment 27: Koyo contends that the Department should not deduct direct selling expenses from ESP, but rather should add them to FMV. Koyo maintains that direct selling expenses in the United States are differences in circumstances of sale, and should be accounted for under 19 U.S.C. 1677b(a)(4) which requires that differences in the circumstances of sale be taken into account in the FMV.

Department's Position: We disagree. We are following long-standing agency practice by deducting direct selling expenses from ESP in accordance with 19 CFR 353.41(e). (See Final Results of Antidumping Duty Administrative Review; Antifriction Bearings from Germany, et al., 54 FR 31721, July 11, 1991; Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico, 56 FR 1794, January 17, 1991; Final Results of Antidumping Duty Administrative Review; Brass Sheet and Strip from Sweden, 55 FR 49317, November 27, 1990; Final Determination of Sales at Less Than Fair Value; Gray Portland Cement from Mexico, 55 FR 29244, July 18, 1990.)

Comment 28: Timken claims that, in the United States, Koyo paid commissions mainly on aftermarket (AM) sales while its own sales agents handled OEM sales. Therefore, Timken claims that the Department should offset any adjustment to FMV to the extent of the U.S. indirect selling expenses up to the amount of commissions deducted from FMV.

Department's Position: In general, the Department offsets commissions paid in one market by the indirect selling expenses paid in the other market up to the level of the U.S. indirect selling expenses. However, if commissions are paid in the United States, but not in the home market, we cap the offset by the sum of the U.S. commissions and indirect selling expenses.

Comment 29: Timken argues that the Department should treat Koyo's early payment discounts in the United States as direct selling expenses, unless proven otherwise. It further argues that the Department should apply the highest reported discount or rebate rate to every sale in the United States as the best information available, since Koyo was not able to tie the reported discounts to the sales to which they applied.

Department's Position: Koyo granted its early payment discounts and rebates on a customer-specific, rather than a sale-specific basis. As we noted in Comment 25, in instances where a respondent fails to provide sufficient information to demonstrate that its adjustment is indirect the U.S. market, we make an adverse assumption and reclassify it as direct.

Comment 30: NSK claims that the calculation of the U.S. inventory carrying cost should be based on the home market short-term credit rate, rather than the U.S. market rate, because the parent company incurs the cost of keeping the goods in inventory in the United States.

Department's Position: We agree with the respondent. Typically, the Department calculates U.S. inventory carrying cost using the U.S. interest rate born by the U.S. subsidiary for inventorying the merchandise. However, as per High Information Content Flat Panel Displays and Display Glass Therefor from Japan (July 16, 1991, 56 FR 32399), if the payment terms extended to a subsidiary by a parent indicate that the parent bears the cost of carrying the merchandise for a portion of time that the merchandise is in inventory, then the parent's short-term interest rate will be used to calculate that portion of the inventory carrying cost. Therefore, we have recalculated NSK's U.S. inventory carrying cost based on the home market credit rate (See Final Results of Antidumping Duty Administrative Review Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan, 56 FR 65228, December 16, 1992.)

Comments Regarding Cost of Production

Comment 31: Timken contends that Koyo's cost system used in its Japanese operations is flawed and does not accurately reflect the cost of producing the products under review. Timken states that respondent's basic cost system does not appropriately attribute the actual cost of production to either production lines manufacturing covered products or the specific models under review. Timken claims that Koyo's production costs and variance cannot be linked to its financial statements, and that the production costs on in-scope and out-of-scope bearings cannot be distinguished. Finally, Timken alleges that Koyo used corporate-wide variances by comparing the total figure for basic costs and the total figure for the cost of goods sold in the financial statements.

Department's Position: Koyo based its costs on the standard cost system used in its normal course of business. The standard costs were adjusted by the variance which occurred between these standards and its actual costs. The variances were calculated by comparing the basic cost to the actual cost of production. The Department reviewed Koyo's model-specific basic costs and variances by reconciling them to the financial statements. Koyo's standard costs are adjusted for variances incurred at each factory. Koyo calculated the plant-wide variance by comparing the total plant-wide cost of production with the plant-wide basic costs, which we determined did not distort model-

specific costs of production. Furthermore, Koyo demonstrated that its cost system appropriately accounts for the different types of bearings, in-scope and out-of-scope. Therefore, as in the 1987–1988 review, we relied on the reported cost of production to calculate the final results of review. (See Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 56 FR 41508, August 21, 1991.)

Comment 32: Timken alleges that Koyo's cost response for its U.S. manufacturing operations in wanting in that the cost system used to prepare the cost submission covering those operations in the United States was entirely different from its normal cost accounting system. Petitioner maintains that Koyo did not explain how the alternative system affects product costs or allocation methods compared to its usual accounting system. In addition, Timken contends that the cycle times reported by AKBMC, Koyo's further manufacturing facility in the United States, are inaccurate since there were discrepancies between the reported times and the cycle times contained in the company's "Standard Cycle Time and Machine Efficiency Report", and, therefore, basic costs are distorted to the extent that Koyo relied on its (mis)reported cycle times to allocate costs to individual models. Timken also claims that Koyo's methodology for allocating direct and indirect selling expenses to the cost of production is not acceptable, since Koyo allocated its corporate expenses to production on the basis of headcount.

Department's Position: As in the 1987–1988 review, Koyo did not use the cost accounting system used to value inventory to prepare the questionnaire response, since that system does not account for current costs. Koyo based its submission on the financial statements from the period of review. The relevant costs were appropriately allocated on a model-specific basis according to cycle times, which measure the time required to perform a specific manufacturing operation in Koyo's U.S. manufacturing facility. We are satisfied that Koyo's allocation of selling expenses based on headcount does not misallocate the expenses of the company away from covered products.

Comment 33: Timken alleges that Koyo's purchase prices of certain materials are not arm's-length transactions because Koyo purchased materials from related suppliers at prices lower than similar materials from unrelated suppliers. In addition, Timken claims that subcontracting performed by related entities was sold to Koyo at less than the related subcontractors' cost of production.

Department's Position: Petitioner's comments address deficiencies noted in the verification report for the 1987–1988 review. We examined the information provided in the questionnaire response for this review and determined that Koyo appropriately accounted for the cost of materials originating from its related suppliers and subcontractors. Therefore, we made no changes to our calculations for the final results of review.

Comment 34: Timken alleges that at least one of Koyo's related contractors failed to provide verifiable costs, since the related contractor did not have a cost accounting system. Timken maintains that the figures provided were merely cost estimates based on production cycle times for one month.

Timken also alleges that a second related subcontractor did not adequately report the costs required to produce covered products since it calculated fabrication costs by multiplying the net weight of total output by a fabrication cost per kilogram. Timken alleges that, since these costs are neither model-specific nor production-line specific, they may not reflect the costs actually incurred for covered merchandise.

Department's Position: Petitioner's comments address deficiencies noted in the verification report for the 1987–1988 review. We examined the information provided in the questionnaire response for this review and determined that Koyo appropriately accounted for the cost of materials originating from its related suppliers and subcontractors. Therefore, we made no changes to our calculations for the final results of review.

Comment 35: Timken claims that the distribution of the subcontractor's variances over plant-wide production is highly distortive and inaccurate, since they are distributed without regard to whether the models in question incorporated any subcontracted costs. Timken maintains that the Department should reject these variances entirely.

Department's Position: As in the 1987–1988 review, Koyo did not allocate it's subcontractor's variances to the plant-wide cost of production. Instead, Koyo based its subcontracting expenses on the actual purchase price between Koyo and its subcontractors. Therefore, since there are no subcontracting variances affecting the reported costs, we did not adjust Koyo's reported costs for the final results of review. (See Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 56 FR 41508, August 21, 1991.)

Comment 36: Timken argues that Koyo's reported labor costs are inaccurate since they are based on plant-wide, rather than production-line wage rates. Timken claims that these labor costs are not adjusted for variances specific to the production of specific bearing types or production lines. Therefore, Timken argues that Koyo's system does not recognize the different net labor costs necessary to produce different type of bearings, including out-of-scope merchandise, high-precision bearings, or bearings produced continually versus those produced in lots.

Department's Position: The Department disagrees with Timken. As in our final results for the 1987–1988 review, the Department accepted the plant-wide labor rate because the other products produced by Koyo involve similar manufacturing processes to the processes for the subject merchandise. The Department believes that no distortion occurred as a result of using this rate or the associated plant-wide variance. Therefore, we did not change our calculations for the final results of review.

Comment 37: Timken argues that Koyo's calculation of general and administrative expenses (G&A) is inaccurate. It notes that Koyo paid bonuses for directors and statutory auditors from retained earnings, so that the period cost of these expenses is not correctly represented.

Department's Position: As in the 1987–1988 review, we determined that bonuses for directors and statutory auditors' fees were similar to a dividend payment and, accordingly, not a production cost. We otherwise determined that Koyo accurately reported its G&A expenses, and we did not change our calculations for the final results of review.

Comment 38: Timken argues that the Department should utilize the best information available for NSK's cost of production for several reasons: (1) The Department could not verify whether total material expenses were captured for the subject merchandise; (2) NSK understated its labor cost to the extent that non-bearing personnel are used in the production of TRBs; (3) NSK has not demonstrated whether transactions with related subcontractors were at arm's-length prices; (4) NSK improperly offset interest expense in its cost of production (COP) calculation with non-operating

income derived from operations other than the production of bearings under review; and (5) NSK has failed to supply information on the depreciation of idle assets in an attempt to impede the completion of the administrative review.

Department's Position: The Department examined material costs for models covered in the review and overall material costs for all products that NSK produces, but did not attempt to examine total material cost for the subject merchandise. We found that, for the models verified, the standard material costs varied slightly from the actual costs. However, overall, we are satisfied that NSK's reported material costs were not distorted since the variance which accounts for the differences between standard and actual costs was correctly incorporated into the reported amounts. Therefore, we did not adjust the reported material costs.

The Department verified both direct and indirect labor costs at the NSK factor producing the subject merchandise. The costs reported by NSK were verified as accurate.

The Department did not have time to verify arm's-length prices with related parties. Because NSK's COP response verified as accurate overall, we are accepting NSK's data.

When calculating COP, the Department requires that interest income be related to the production of the subject merchandise in order to offset it against interest expense. We are satisfied that the interest income NSK received on back deposits and notes meets this requirement.

We agree that depreciation on idle assets should be included as an element of the cost of production. However, this element is insignificant within the meaning of 19 CFR 353.59. Consequently, we made no adjustment to NSK's costs.

Comments Concerning the Cost Test Methodology

Comment 39: Koyo asserts that the Department excluded certain home market sales which were sold at prices below the cost of production where such sales did not occur "over an extended period of time" during the period of review. Koyo notes that the Department defined an "extended period of time" as sales occurring below the cost of production in more than two months of the review period (i.e., in three or more months of the review period). Koyo suggests that the definition of "extended period of time" be changed to mean sold below cost in each month of the review period.

NTN disagrees with the Department's conclusion that three or more months during a period of review represents an extended period of time for sales made below the cost of production. NTN contends that an extended period must be defined as a majority of the period, or in excess of 50 percent of the period.

Department's Position: We disagree. Section 773(b)(1) of the Tariff Act is designed to ensure that below-cost sales are not disregarded if these sales occurred over a short period of time or resulted from normal business practices, such as selling obsolete or end-of-year merchandise at below-cost prices. TRBs are a commodity item that do not demonstrate perishability, seasonality, or frequent generational changes in models. No information on the record in this case indicates that below-cost sales are a normal practice or characteristic in the industry. We used the period of three months to define an extended period of time since three months is commonly used to measure corporate, financial, and economic performance. Use of three months to measure frequency of below-cost sales shows that sales below the cost of production are not random, accidental, or sporadic. This time measurement also ensures that the Department uses home market prices that are above the cost of production in its price-to-price comparisons in all but random or sporadic situations. Therefore, we have determined below-cost sales occurring in three or more months of the review period to have been made over an extended period of time. (See Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan, 56 FR 65228, December 16, 1991.)

Comment 40: Timken asserts that if a model is sold in three or fewer months, the Department should determine that sales below-cost occur over an extended period of time if sales below-cost occurring in any one of the months in which it is sold.

Department's Position: We disagree. We determined that sales below-cost occur over an extended period of time if the sales below-cost occur in all of the months in which a model is sold. Therefore, if a model is sold during one month only, the sales occur below cost, then that model is sold below cost over an extended period of time. Similarly, if a model is sold during two months of the review period, and, sales below-cost occur during both of those months, then that model is sold below cost over an extended period of time and all below cost sales of that model are excluded from our analysis. (See Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan, 56 FR 65228, December 16, 1991.)

Comment 41: Koyo argues that the Department should allocate losses as well as profits in its calculation of further manufacturing, rather than setting the allocated profit to zero for those sales which had a profit of less than zero (see Color Picture Tubes from Japan, 55 FR 37915, 1990 and Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 56 FR 41508, August 21, 1991).

Department's Position: We agree and have changed our calculations for the final results of review.

Miscellaneous Comments Regarding Level of Trade, Related Parties, Sample Sales, Consumption Tax, Contemporaneity, Foreign Trade Zones, Cash Deposits, and Date of Sale

Comment 42: NSK contends that the Department incorrectly ignored the commercial realities of distribution in the Japanese market by not accepting NSK's designations of four levels of trade in the home market. NSK believes the Department should compare home market sales to unrelated distributors for original manufacture to OEM sales in the United States and home market sales to OEMs for replacement to after-market sales in the United States.

Department's Position: We agree. Subsequent to our preliminary results of review, we compared OEM sales destined for original manufacture and after-market, and distributor sales destined for original manufacture and after-market. We found that, in most instances, sale to both OEMs and distributors destined for original manufacture were at higher quantities and at lower prices than sales destined for the after-market. Consequently, we have collapsed all home market sales destined for original manufacture and all home market sales destined for the after-market into distinct levels of trade for comparison to U.S. sales.

Comment 43: Timken argues that the Department should include Koyo's sample sales in its home market database. In addition, Timken alleges that Koyo has not demonstrated that sample sales are out of the "ordinary course of trade."

Department's Position: We disagree. We examined Koyo's sales practices with respect to sample sales at the verification for the 1987/1988 review and determined that the prices of samples were negotiated separately

from the standard price agreements. We found no discrepancies between the reported and verified information in the previous review, and have no basis for challenging the information reported in the current review. Therefore, as in the final results of review on Tapered Roller Bearings Four Inches or Less in Outside Diameter from Japan, 56 FR 38721, June 3, 1991, and Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan, 56 FR 41508, August 21, 1991, we have not included sample sales in Koyo's home market database for the purpose of determining model match and FMV for the final results of review.

Comment 44: Timken contends that the Department must not exclude sample sales or sales NTN has classified as not in the ordinary course of trade in the home market.

Department's Position: Due to the significant number of home market sales transactions, we are satisfied that the results of this review are not meaningfully affected by the exclusion of sample sales and sales NTN identified as not in the ordinary course of trade. These transactions are comprised of trial sales for evaluation by customers, sales of sample merchandise, and sales of very small quantities on a spot basis in unusual circumstances. Consequently, we are satisfied that these are sales not in the ordinary course of trade, and we have not included them in our analysis.

Comment 45: It is petitioner's conclusion that TRBs entering a foreign trade zone or subzone (FTZ) are not exempt from the antidumping law. Therefore, Timken asserts that the Department should require the reporting on the date and status of admission and liquidation, and the collection of duties, for any of NTN's purchase price sales of TRBs brought into FTZs during the period of review. Importer Caterpillar contends that TRBs admitted to an FTZ, or transferred between FTZs, or re-exported from FTZs, are not subject to the collection of antidumping duties until, and unless, they are entered for consumption in the United States. Caterpillar also contends that TRBs admitted into an FTZ in non-privileged status and then transformed into merchandise not covered by an antidumping duty order are not subject to antidumping duties.

Department's Position: We disagree with petitioner's assertion that TRBs admitted into an FTZ are subject to an antidumping review and the collection of duties regardless of whether they enter U.S. customs territory as merchandise subject to the antidumping duty order. Section 751 of the Tariff Act instructs the Department to determine "the FMV and United States price of each entry of merchandise subject to the antidumping duty order," and the "amount, if any, by which the FMV of each entry exceeds the United States price of the entry." As we stated in the final results of review on Antifriction Bearings from the Federal Republic of Germany, et al. (56 FR 31703, July 11, 1991), our understanding of the term "entry" in the antidumping law is that it unambiguously refers to release of merchandise into the customs territory of the United States. To the extent TRBs were admitted into an FTZ in a non-privileged status and transformed into merchandise not subject to the order before entering U.S. Customs territory, the Department currently has no basis for the assessment of antidumping duties on the merchandise. The Department recently adopted regulations governing FTZs that address this issue, but they are only effective for merchandise entering an FTZ on or after November 7, 1991, with certain exceptions (*Foreign Trade Zones in the United States; Final Rule*, 56 FR 50790 (1991)) (to be codified in 15 CFR part 400). Under these rules, items subject to an antidumping order must be classified as privileged and will be subject to antidumping duties. Thus, respondents will be required to post cash deposits equal to the amount of estimated antidumping duties on all TRBs that enter an FTZ on or after November 7, 1991.

Comment 46: Petitioner states that a Japanese consumption-tax-adjusted USP must be compared to a tax inclusive home market price.

Department's Position: We agree. For U.S. sales that occurred on or after April 1, 1989, a three percent consumption tax has been calculated and added to both USP and FMV.

Comment 47: Koyo maintains that the Department erred in comparing actual U.S. sales transactions with a weighted-average FMV based on the entire 12-month period of review. Koyo believes that the Department's comparison of weighted-average FMVs for the entire period of review with individual U.S. prices yields margin calculations that are not representative. Koyo asserts that, particularly since negative margins are disregarded, the Department must calculate weighted-average U.S. prices on the same basis as FMV to produce fair and representative results.

Finally, Koyo argues that the Department's decision to replace the monthly weighted-average FMV with a weighted-average FMV for the entire review period is contrary to the purpose of U.S. antidumping law. Koyo asserts that the methodology used by the Department to calculate FMV must be predictable to allow the foreign manufacturers the opportunity to adjust their pricing policies.

Department's Position: We agree that section 777A of the statute requires the Department to ensure that samples and averages shall be representative of the transactions under review. Therefore, before adopting use of an weighted-average FMV for the 12-month period of review, we conducted two studies to insure that the results produced would be representative. First, we compared the monthly weighted-average price to the weighted-average price for the entire review period. We found that the period's weighted-average price for more than 90 percent of the products sold came within 10 percent of the monthly weighted-average price. Second, we tested whether home market prices of the subject merchandise consistently rose or fell during the period of review. We found that no significant correlation existed between price and time. That is, prices did not consistently rise or fall so as to make period weighted-average prices unrepresentative of home market prices.

Therefore, the results of these tests demonstrate that Koyo's pricing practices remained stable during the review period, thus insuring that a weighted-average FMV for the entire period of review is as representative of home market prices as the traditional monthly weighted-average FMV. We are satisfied that, if the weighted-average FMV is representative of the home market prices for the period of review, then the margins calculated using weighted-average prices are also representative.

We disagree with Koyo's assertion that, to insure representative results, we must average USPs on the same basis as FMV. An average USP has been, and continues to be, unacceptable, because it would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. That is, a foreign producer could sell half its merchandise in the United States at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin. Except in instances where the Department has conducted reviews of seasonal merchandise which has very significant price fluctuations due to perishability (Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers from Colombia, 55 FR 20495, May 17, 1990), the idea of averaging USP has been rejected (Final Results of Antidumping Administrative Review, Pressure

Sensitive Plastic Tape from Italy, 54 FR 13091, March 30, 1989). Since the merchandise under review is not a perishable product and significant fluctuations in the price did not occur, there is no reason to believe that averaging of USP is needed.

We disagree with Koyo's assertion that our change in methodology has removed predictability from the process. Since such a high percentage of the sales have a weighted-average price for the entire 12-month period of review which falls within 10 percent of the monthly weighted-average price, the calculation of a weighted-average FMV for the entire review period, is not less predictable than the calculation of a monthly weighted-average FMV. (See Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter and Certain Components Thereof, from Japan 56 FR 65228, December 16, 1991.)

Comment 48: Koyo argues that the interests of justice require that all interested parties be given an opportunity to review the Department's computer programs prior to the issuance of the final results. Koyo contends that if the Department fails to release the program prior to issuing the final results, there will be insufficient time to identify and correct programming errors before litigation commences and the Department is divested of jurisdiction and cannot make changes to the record. Therefore, the clerical errors in the Department's calculation without a Court order.

Department's Position: We disagree that the parties are denied the opportunity for meaningful comment on the clerical errors in the computer program if they do not have access to the calculations prior to the issuance of the final results of review. The Department's regulations provide parties an opportunity to request disclosure after issuance of final results and to identify and comment on any clerical errors in the calculations (19 CFR 353.28).

Comment 49: Caterpillar contends that separate importer-specific margins, both for purposes of assessment and for purposes of establishing an estimated duty deposit rate, must be determined for importers who engage only in purchase price transactions.

Department's Position: The Department agrees that importer-specific assessment rates are appropriate. However, in general, we do not agrees that importer-specific deposit rates are appropriate. Duty deposits are merely estimates of what the future duty amount will be. Therefore, we believe that the need for a precise, importer-by-importer estimate of duties is outweighed by the need to provide the Customs Service with a set of deposit rates that can be effectively administered. In this administrative review, we have limited our analysis to NTN's purchase price sales to Caterpillar. Therefore, we will issue a deposit rate for imports by Caterpillar from NTN based on our analysis. The cash deposit rate for the TRBs NTN exports to the United States for which Caterpillar is not the importer will remain at 36.53 percent, the rate established in the antidumping duty order, as amended.

Comment 50: Timken claims that NSK has not adequately defined the dates of sale for home market sales.

Department's Position: We disagree. Our verification of NSK's response showed the date of shipment to be the date of sale.

Comment 51: NSK asserts that merchandise that was entered prior to the POR, but was sold during the POR, may not be used to calculate antidumping margins.

Department's Position: We disagree. Because of the time lag between entry and sales in an ESP situation, the Department will never be able to gather complete information for the calculation of antidumping margins within the time constraints of an administrative review. Therefore we use the margins on sales within the POR as the most reasonable representation of margins on entries during the POR.

Final Results of Review

As a result of our comparison of United States price to foreign market value, we determine that the following margins exist for the period October 1, 1988, through October 31, 1989:

Manufacturer/exporter	Margin (percent)
Koyo Seiko, K.K.	24.88
Nachi-Fujikoshi Corporation *	40.37
Nippon Seiko K.K.	40.37
NTN/Caterpillar	38.69

* No shipments; margin represents the highest non-BIA rate established for any firm included in this review.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the stated percentages. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties, shall be required on shipments of TRBs for Japan: (1) For companies participating in this review, the cash deposit rates established in this review; (2) For manufacturers or exporters not covered by this review, but covered in a prior segment of the proceeding (either the original investigation or a prior review), the cash deposit rate will be the rate published in the most recent segment of the proceeding in which the company participated; (3) For exporters who are not covered by this review or a prior segment of the proceeding, and who export merchandise produced by manufacturers that have been covered by this review or a prior segment of the proceeding, the cash deposit rate will be the rate published for the manufacturer of the merchandise in the most recent segment of the proceeding in which the manufacturer participated; and, (4) For all other exporters/producers of this merchandise who are unrelated to any reviewed firm, the case deposit will be 40.37 percent, the highest non-BIA rate established for any firm included in this review.

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.222.

Dated: January 31, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-3202 Filed 2-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-604]

Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 14, 1991, the Department of Commerce published the preliminary results of its 1989-90 administrative review of the antidumping duty order on tapered

roller bearings and parts thereof, finished and unfinished, from Japan. The review covers four manufacturers/exporters of this merchandise to the United States during the period October 1, 1989, through September 30, 1990.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted the margins for some companies.

EFFECTIVE DATE: February 11, 1992.

FOR FURTHER INFORMATION CONTACT: Sheila Baker, Joseph Hanley, or Laurel LaCivita, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order (52 FR 37352, October 6, 1987) on tapered roller bearings, and parts thereof, finished and unfinished, from Japan, in the Federal Register (56 FR 40307). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review include tapered roller bearings (TRBs) and parts thereof, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the outstanding dumping finding covering certain TRBs from Japan four inches or less in outside diameter and certain components thereof (A–588–054), are not included within the scope of this order. However, this order includes all tapered roller bearings, and parts thereof, as described above, that are manufactured by NTN Toyo Bearing Co., Ltd. (NTN). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers four manufacturers/exporters of TRBs during the period October 1, 1989, through September 30, 1990: Koyo Seiko Company Ltd. (Koyo), Nachi-Fujikoshi Corporation (Nachi), NSK Ltd. (NSK) (formally (Nippon Seiko, K.K.), and entries of merchandise manufactured by NTN, and entered by Caterpillar Incorporated (Caterpillar) during the period October 1, 1989, through September 30, 1990. Because the Department did not establish a separate rate for Nachi in the antidumping investigation and Nachi has never before been subject to administrative review, we have assigned Nachi a rate of 45.95 percent. This rate, commonly referred to as the All Others rate, is the rate applicable to those companies for which we have not conducted an investigation or review.

ANALYSIS OF COMMENTS RECEIVED

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, one respondent, and an unrelated importer, we held a hearing on October 8, 1991. We received case briefs and rebuttal briefs from petitioner (The Timken Company (Timken)), Koyo, NSK, and NTN, and Caterpillar.

Comments are addressed in the following order:

1. General Issues
2. Annual Average Foreign Market Value, Model Match, and Cost Test Methodology
3. Calculation of Foreign Market Value
4. Calculation of U.S. Price
5. Comments Regarding Cost of Production
6. Comments Regarding the Use of Best Information Available
7. Clerical Errors

Comments Regarding General Issues

Comment 1: Timken argues that the Department should have included in this review all products within the scope of the finding that are admitted to a foreign trade zone (FTZ) or subzone. Timken also argues that the Department should require respondents to post cash deposits in the amount of the estimated antidumping duties upon all TRBs subject to the scope of this order admitted to FTZs. At the least Timken argues that the Department should apply the regulation it has proposed regarding goods entered into an FTZ that are covered by an antidumping duty order.

Department's Position: We disagree with petitioner's assertion that at the time the subject merchandise was admitted into an FTZ it became subject to an antidumping review and the collection of duties regardless of whether it enters U.S. customs territory as merchandise subject to the antidumping duty order. Section 751 of the Tariff Act instructs the Department to determine "the foreign market value and United States price of each *entry* of merchandise subject to the antidumping duty order", and the "amount, if any, by which the foreign market value of each *entry* exceeds the United States price of the entry." (Emphasis added.)

Under the Department's practice, at the time the merchandise subject to this review as admitted into the FTZ the merchandise was not subject to antidumping duties. As we stated in the final results of review on Antifriction Bearings From the Federal Republic of Germany, et al. (56 FR 31703, July 11, 1991), Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan (56 FR 41506, August 21, 1991), Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan (56 FR 65228, December 16, 1991), our understanding of the term "entry" in the antidumping law is that it unambiguously refers to release of merchandise into the customs territory of the United States. Importers were allowed to elect privileged or non-privileged status of TRBs admitted to FTZs. To the extent that TRBs were admitted into an FTZ in a non-privileged status and transformed into merchandise not subject to the finding before entering U.S. customs territory, the Department currently has no basis for the assessment of antidumping duties on the merchandise.

The Department recently adopted regulations governing FTZs that address this issue, but they are effective only for merchandise entering an FTZ on or after November 7, 1991, with certain exceptions (Foreign Trade Zones in the United States; Final Rule, 56 FR 50790 (1991)) (to be codified in 15 CFR part 400). Under these rules, items subject to an antidumping duty order must be classified as privileged on admission to the FTZ and will therefore be subject to antidumping duties on entry, even if transformed in the FTZ into goods not subject to the order. Respondents will be required to post cash deposits equal to the amount of estimated antidumping duties on all TRBs entered through FTZs (however transformed) on or after November 7, 1991.

Comment 2: Timken asserts that according to the statute and judicial precedent (*Zenith Electronics Corp.* v. *United States*, 10 CIT at 276, (1986)), the Department may not make an adjustment for consumption taxes forgiven on exports by simply deducting the tax from FMV. Rather, Timken argues, an upward adjustment in the amount of the tax must be made to U.S. price.

Timken asserts that the Department should include the Japanese consumption tax in foreign market value (FMV) and make a corresponding upward adjustment to U.S. price. To impute the home market tax, Timken argues, the Department should simply apply the tax rate to both the U.S. price and the FMV. According to Timken, the antidumping law does not support the proposition that a tax differential generated by actual dumping is eligible for a circumstance of sale adjustment since it would artificially suppress margins in cases where dumping is present (Zenith, 10 CIT at 280–281, (1986)).

Additionally, Timken argues that the use of ESP as the basis for the consumption tax is inappropriate and overstates the amount of the adjustment to U.S. price since the Department does not deduct a reasonable amount for ESP to account for the reseller's profit. Accordingly, Timken believes that the Department should use the f.o.b. origin prices between related parties as the basis for the consumption tax.

Department's Position: We have added an imputed consumption tax to the U.S. price according to section 772(d)(1)(C) of the Tariff Act. Because the statute directs us to adjust for home market consumption taxes through an addition to U.S. price, we generally used tax-inclusive prices in each market to calculate a dumping margin. No consumption tax was added to the U.S. price when the FMV was based on constructed value, because section 773(e) of the Tariff Act does not provide for the inclusion of any tax in constructed value (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings and Parts Thereof From the Federal Republic of Germany, et al. (56 FR 31729, July 11, 1991), Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 65228, December 16, 1991).

We calculated the addition to U.S. price by applying the home market tax rate to the net U.S. price after all other adjustments were made. This "ex factory" tax basis for U.S. price is the best information available because the home market sales were reported net of the consumption tax. In order to ensure a tax-neutral absolute margin, we made a circumstance of sale adjustment to FMV to offset any difference in the home market and U.S. tax.

Comment 3: Koyo alleges that the Department failed to provide it with an adequate disclosure of the preliminary results, and therefore violated antidumping law, the Department's regulations, and Koyo's rights of due process of law. Koyo bases this allegation on the fact that the Department provided only sample printouts of the data that shows the margin calculations, rather than the entire data set. Koyo asserts that, due to this practice, it has been denied a full explanation of the procedures used by the Department to calculate the preliminary results.

Koyo argues that it could not determine from the printouts which home market sales were used to calculate the foreign market values, and which home market models the Department determined to be such or similar merchandise. As a result, Koyo alleges that it was forced to hypothesize as to which home market models were compared to the models sold in the U.S.

Koyo requests that the Department provide it with additional computer printouts, or, preferably, a magnetic tape containing a copy of the computer program and all of the intermediate data sets. Koyo also requests that it be given two weeks after disclosure of the newly requested information to file a supplemental case brief, and to request a further hearing on the preliminary results.

Department's Position: We disagree with Koyo's assertion that we failed to provide adequate disclosure of the preliminary results. One week before the scheduled disclosure conference we released to counsel for Koyo the entire computer program used to calculate the preliminary results along with computer printouts and an analysis memo explaining our methodology. After allowing Koyo's representatives the opportunity to examine these documents we met with them to fully explain our methodology and answer any questions they may have regarding our calculations.

Koyo's assertion that adequate disclosure of the preliminary results is only attainable by printing all data sets in their entirety is unfounded. The computer program, which we released in its entirety, includes every calculation used to produce the preliminary margins. Indeed, the computer program, along with the analysis memo, is the key to understanding the methodology employed by the Department.

In an annual review of TRBs there are often tens of thousands of sales in each market. The enormous data sets created by such a high volume of sales number thousands of pages in length and are a redundant and wasteful display of the Department's methodology. Therefore, in the interest of easing the administrative burden placed upon the Department, we printed sample pages of various data sets and released them to Koyo. These sample datasets, along with the computer program and the analysis memo, provide Koyo with the opportunity to examine the results of the calculations and comment meaningfully on our methodology.

Comment 4: Caterpillar contends that separate importer-specific margins, both for purposes of assessment and for purposes of establishing an estimated duty deposit rate, must be determined for importers who engage only in purchase price transactions.

Department's Position: The Department agrees that importer-specific assessment rates are appropriate. However, in general, we do not agree that importer specific deposit rates are appropriate. Duty deposits are merely estimates of what the future duty amount will be. Therefore, we believe that the need for a precise, importer-by-importer estimate of duties is outweighed by the need to provide the Customs Service with a set of deposit rates than can be effectively administered. In this administrative review, we have limited our analysis of NTN's purchase price sales to Caterpillar. Therefore, we will issue a deposit rate for imports by Caterpillar from NTN based on our analysis. The cash deposit rate for the TRBs NTN exports to the U.S. for which Caterpillar is not the importer will remain at 36.53%, the rate established in the antidumping duty order, as amended.

Comments Regarding Annual Averaging of Foreign Market Value, Model Match, and Cost Test Methodologies

Comment 5: Koyo argues that section 777A of the Tariff Act authorizes the Department to use averaging techniques to establish U.S. price and FMV only when such averaging techniques yield fair and representative results. Koyo believes that, regardless of whether an annual weighted-average FMV is as representative of home market prices as a monthly weighted-average FMV, the Department has failed to demonstrate that its use leads to margin calculations which are representative.

Koyo further submits that the Department's claim that the annual weighted-average FMV is as representative as the monthly weighted-average FMV is flawed. Koyo believes that the Department's determination that 98 percent of the home market sales have an annual weighted-average price that falls within 10 percent of the monthly weighted-average price is insufficient grounds for using an annual weighted-average FMV. Koyo believes that a 10 percent variance can have a dramatic, distortional effect on the

margin calculation because it can increase the margin by as much as 10 percent, and produce findings of dumping where no dumping occurred. Koyo believes that this problem is further exacerbated by the Department's practice of not crediting respondents with negative dumping margins on sales made in the United States at prices above those in the home market.

Koyo asserts that, since the Department has already gone to the effort of calculating a monthly weighted-average FMV, it should use the monthly FMV in its margin calculations since it is a more contemporaneous match than an annual weighted-average FMV. Koyo cites section 773(a)(1) of the Tariff Act and § 353.46(a)(2) of the Department's regulations to support its argument that the Department must only compare foreign market values that are contemporaneous with U.S. sales.

Alternatively, Koyo argues, the Department should compare an annual weighted-average U.S. price to the annual weighted-average FMV to insure an apples-to-apples comparison. At the least, Koyo believes that a monthly weighted-average FMV should be used in instances where the annual weighted-average price deviates from the monthly weighted-average price by more than 10 percent.

Finally, Koyo argues that the Department's decision to replace the monthly weighted-average FMV with an annual weighted-average FMV without notifying Koyo is contrary to the purpose of U.S. antidumping law. Koyo asserts that the methodology used by the Department to calculate FMV must be predictable to allow the foreign manufacturers the opportunity to adjust their pricing policies.

Department's Position: Section 777A of the Tariff Act requires the Department to ensure that samples and averages shall be representative of the transactions under review. Therefore, before adopting the use of an annual weighted-average FMV, we conducted two studies on prices to ensure that the transactions and, thus, the results produced would be representative. First, we compared the monthly weighted-average price to the annual weighted-average price. We found that the annual weighted-average price for more than 90 percent of the products sold was within 10 percent of the monthly weighted-average price. Second, we tested whether home market prices of the subject merchandise consistently rose or fell during the period of review. We found that no significant correlation existed between price and time.

That is, prices did not consistently rise or fall so as to make annual weighted-average price unrepresenatives of home market prices.

Therefore, the results of these tests demonstrate that Koyo's pricing practices remained stable during the review period, thus insuring that an annual weighted-average FMV is as representative of home market prices as the traditional monthly weighted-average FMV. We are satisfied that, if the weighted-average FMV is representative of the home market prices for the period of review, then the margins calculated using the weighted-average price are accurate.

We disagree with Koyo's assertion that the Department's determination that 98 percent of the home market sales have an annual weighted-average price that falls within 10 percent of the monthly weighted-average price is insufficient grounds for using an annual weighted-average FMV. All averaging techniques, whether they are monthly or annual, result in variances between the actual price and the average price. The fact that over 90 percent of the annual weighted-average prices fall within 10 percent of the monthly weighted-average prices demonstrates that the variances produced by using an annual weighted-average FMV do not differ significantly from the variances produced by using a monthly weighted-average FMV. Furthermore, Koyo offers no evidence that an annual weighted-average FMV results in a systematic bias that would create higher dumping margins than would result from using a monthly weighted-average FMV.

Also, we disagree with Koyo's assertions that, to insure representative results, we must average U.S. prices on the same basis as FMV, or that we must credit respondents with negative dumping margins. Both cases have been, and continue to be, unacceptable, because they would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. That is, a foreign producer could sell half its merchandise in the U.S. at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin. The Department does not encourage selective dumping, nor do we reward a party for not dumping. Except in instances where the Department has conducted reviews of seasonal merchandise which has very significant price fluctuations due to perishability (Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers From Colombia (55 FR 20495, May 17, 1990)), the idea of averaging U.S. prices has been rejected (Final Results of Antidumping Duty Administrative Review, Pressure Sensitive Plastic Tape From Italy (54 FR 13091, March 30, 1989)). Since the merchandise under review is not a perishable product, and our tests of home market sales revealed that there are no significant price fluctuations, there is no reason to believe that averaging of U.S. prices is needed to account for very significant price fluctuations.

The Department notes that the use of an annual weighted-average FMV in calculating margins dramatically simplifies the analysis in this review. Koyo's presumption that we have already 'gone to the effort' to calculate an annual weighted-average FMV at the onset of our analysis and, therefore, have completed the complicated calculations, is mistaken. At the onset of our analysis, we compare annual prices, not FMVs, to monthly prices, not FMVs, for representativeness. Upon finding that the annual price is representative, we then calculate an annual weighted-average FMV for a model. Since we have confirmed that price variations are not correlated with time, there is no contemporaneity issue. The fact that we do not have to make multiple searches for contemporaneous matches results in a dramatic simplification of our analysis, while maintaining the integrity of the representative FMV.

We disagree with Koyo's assertion that our change in methodology has removed predictability from the process. Since such a high percentage of the sales have an annual weighted-average price which falls within ten percent of the monthly weighted-average price, the calculation of an annual weighted-average FMV, which the Department has used in this review, is no less predictable than the calculation of a monthly weighted-average FMV.

Comment 6: Koyo asserts that the Department's model match methodology is flawed because it does not use a cap on the permissible difference between the home market model and the U.S. model for each of the five criteria used to determine similar merchandise. Koyo cites examples of home market models that it believes are dissimilar to the U.S. models to which they were compared. Koyo asserts that a ten percent cap on the five physical characteristics criteria would prevent the matching of alleged dissimilar home market models to U.S. models.

NTN argues that the Department should institute a ten percent cap on the five physical criteria. NTN claims that radically different bearings could pass the twenty percent difference in merchandise test, used by the Department to ensure that dissimilar bearings are not matched together

simply because they have the lowest sum of the deviations.

Caterpillar contends that the Department is not justified in its failure to apply a ten percent cap in connection with the sum of the deviations method, as it did with the greatest single deviation method. Caterpillar argues that, without the implementation of a ten percent cap, the Department's model match could result in many matches which do not fall under any of the three definitions of such or similar merchandise provided for in 19 U.S.C. 1677(16), because the matched products are not at all alike in the purposes for which used. Caterpillar maintains that products that look different, have dissimilar components, constructions, and capabilities, and different uses could be matched under the sum of the deviations method. Caterpillar argues that such dissimilar products would be targeted and priced for sale in different markets and, consequently, would not be considered such or similar merchandise.

Department's Position: We disagree with the argument that our decision not to apply a ten percent criterion cap results in the comparison of models which do not constitute similar merchandise. We have based the determination of physical similarity on the smallest sum of the deviations of the five physical criteria. Consistent with section 771(16) of the statute, we determined that all TRBs are alike in the purposes for which they are used (*i.e.* to reduce friction) and we eliminated models that are not of equal commercial value. There is no further requirement that home market models must be technically substitutable, purchased by the same type of customer, or have the same end use as the U.S. model.

Throughout the extended history of the two TRB proceedings, the Department requested input by interested parties and evolved the use of these five physical criteria to identify and compare models sold in the U.S. and the home market. We are aware that these five characteristics are not substitutes for the technical specifications of the products under review, since TRB product manual list more than 25 statistics for each bearing. However, we have determined that, for the purposes of selecting similar merchandise in a dumping calculation, these five criteria are the pertinent data to be collected and analyzed.

Comment 7: Timken notes that the Department permitted the respondents to conduct the model match selection of such or similar merchandise according to the instructions included in the questionnaire, and to submit sales information on only those models that they determined to be such or similar to the models sold in the U.S. Timken objects to this method of data collection for two reasons.

First, Timken believes that the Department has the statutory responsibility to select which merchandise is such or similar and should not forfeit this responsibility to the respondents. At the least, Timken urges the Department to require respondents to submit model match criteria on all models sold in the home market so that the Department may confirm that the models included on the sales data set are the most similar models sold in the home market.

Second, Timken objects to the selection of such or similar merchandise before the Department determines the basis for averaging foreign market values. While Timken acknowledges that this was not a problem for this review since NTN reported sales data for all models sold in the home market and annual averaging was acceptable for Koyo and NSK, it notes that the home market model which is considered most similar to a U.S. model may change depending on the window period used to make the selection. Since the Department must test the stability of the home market sales before it determines whether it intends to use a monthly or annual average foreign market value, Timken urges the Department to collect sales information on all home market sales in future reviews, thus ensuring that, regardless of the averaging technique utilized, the Department will always have the most similar home market model in its home market sales data set.

Additionally, Timken objects to the fact that Koyo submitted a supplemental home market sales listing based on the Department's revised model match methodology without submitting a copy of the revised model match program used to select the models. Unless Koyo submits a copy of this program, Timken argues, the Department has abdicated to Koyo its "statutory responsibility for determining what TRB models * * * were the most similar to models sold in the United States." (*Timken* v. *United States*, 10 CIT 86, 98, 630 F. Supp. 1327, 1338 (1986)). Timken argues that because Koyo did not even supply the minimal information the Department requested, the Department has no choice but to use best information otherwise available for home market price.

Department's Position: We disagree with Timken's argument that the Department has abdicated its statutory responsibility by allowing the respondents to submit only such or similar merchandise sold in the home market. In the original questionnaire issued by the Department, we included specific and detailed instructions that spelled out the model match methodology to be used by the respondents to identify such or similar merchandise. The instructions, which the respondents are required to follow, detail a model match methodology which is highly objective in its selection of such or similar merchandise, thereby avoiding any subjective criteria that a respondent may wish to add to the selection process. Additionally, we required the respondents to submit the computer programs they used to identify such or similar merchandise in order that we may confirm that the respondents correctly followed our instructions.

Therefore, Timken's assertion that we abdicated our statutory responsibility to identify and select such or similar merchandise is unfounded. Our detailed instructions outlining the objective methodology to be used by the respondents, combined with our examination of the programs used by the respondents to identify such or similar merchandise, fulfills our statutory obligation to determine what merchandise should be considered such or similar.

Koyo submitted a computer tape containing model match criteria on every model sold in the home market during the period of review. Our analysis of this data reveals that Koyo properly followed the model match instructions conveyed by the Department and submitted sales of the four most similar models sold in the home market during the period of review.

Comment 8: NTN argues that the Department should only compare bearings of the same design type. Specifically, NTN claims that bearings of different precision ratings should not be compared. NTN contends that comparison of high precision (HP) bearings to normal precision bearings is contrary to law. NTN alleges that the physical nature of HP bearings is much different from that of normal bearings and that HP items are sold at much higher prices than normal bearings. NTN cites the first review of antifriction bearings (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings From the Federal Republic of Germany, et al. (56 FR 31714, July 11, 1991)), where bearings of different precision ratings were not compared.

Timken contends that NTN has given no evidence on the record to

demonstrate why these factors should be added to the Department's methodology. Timken further notes that if the design and component material were so radically different, the twenty percent difference in merchandise cost test would account for the differences.

Different's Position: We agree with Timken. If the bearings themselves are radically different, the sum of the deviations model match addresses the differences in physical criteria. If the bearings look similar, but their component materials are drastically different, and therefore not comparable, this difference would be addressed in the twenty percent difference in merchandise test.

Comment 9: NTN argues that the Department incorrectly used best information available when NTN failed to supply a set splitting (cost) ratio. NTN claims that the only bearings which are missing such information are certain types of bearings which cannot be split because the resulting split items are never sold commercially. NTN further argues that the Department should not split sales of sets at all. NTN claims that the statute does not permit the creation of fictitious sales for the purposes of calculating FMV. NTN contends that sales of sets may not be used to create sales of similar cups and cones because the set is not similar to the cup or cone sold in the U.S.

Timken argues that the Department's consistent practice of splitting sets to calculate FMV has been approved by the Court of International Trade (*Timken Company* v. *United States*, 11 CIT at 793–795, 673 F. Supp. at 504–595 (1987) (*Timken II*), Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (55 FR 22369, June 1, 1990), Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (55 FR 38721, June 6, 1991) ("It has been our consistent practice to create the largest possible FMV pool of comparable merchandise by splitting home market sets into component cups and cones and adding them to the home market sales dataset of individually sold cups and cones before making sales comparisons with U.S. sales"); Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan (52 FR 30703, August 17, 1987)).

Department's Position: We agree with Timken. In *Timken2*, the court pointed out that these split sales are not "fictitious" sales, as NTN alleges, but they are real sales made to real customers. The court upheld the Department's decision to split sales of sets because, in the absence of that practice, NTN could have forced the Department to use constructed value in its analysis by simply selling sets in one market and cups and cones in the other. "The court declines to read section 1677b(a)(1) to permit such control by foreign manufacturers of the manner in which foreign market value is determined" (*Timken2*, at 504–505). Likewise, the Department is faithful to this principle in the splitting of certain sets which NTN claims are not ever sold as single cups or cones. If these split cups or cones are determined to be the most similar merchandise to the product sold in the U.S., they should rightly be compared to the most similar merchandise.

Comment 10: Timken asserts that the Department needs to modify its test to determine whether below-cost sales occurred over an extended period of time. Timken notes that the Department determines that below-cost sales of a model take place over an extended period of time when the below-cost sales occur in three months or more of the review period. However, if a model is sold in less than three months of the review period, the Department determines that below-cost sales take place over an extended period of time when the below-cost sales take place in all of the months in which sales of the model occurred. Timken asserts that the cost test is illogical when applied to models sold in less than four months of the review period since it requires that below-cost sales be found in every month the model was sold before they are found to be sold over an extended period of time.

NTN argues that the Department has not defined what it considers an extended period of time. NTN maintains that an extended period of time must account for at least fifty percent of the period of review.

Department's Position: We used a period of three months to define extended period of time since three months is commonly used to measure corporate, financial, and economic performance. The use of three months to measure frequency of below-cost sales shows that sales below COP are not random, accidental, or sporadic. This time measurement also ensures that the Department uses home market prices that are above COP in its price to price comparisons in all but random or sporadic situations.

However, the use of only a three month time measurement is incomplete since it excludes models that were sold in only one or two months of the review period. In cases where a model was sold in only one or two months, we determined that below-cost sales took place over an extended period of time if the below-cost sales occurred in one or two months respectively. While this test for models sold in two months or less of the review period ensures that an extended period of time test is applied to all sales, it does not penalize the respondent for random, accidental, or sporadic sales below COP.

Comments Regarding Calculation of Foreign Market Value

Comment 11: Timken asserts that Koyo mischaracterized the home market level of trade classification by classifying certain sales to original equipment manufacturers (OEM) as aftermarket (AM) sales. Timken contends that Koyo should not be allowed to classify sales to OEM customers as AM sales even though those sales are intended to supply the customer's service or replacement business. Timken argues that Koyo did not report different prices for the sales it made to OEM customers for resale in the aftermarket, and did not provide information to the effect that these sales were at different levels of trade.

In addition, Timken alleges that in the U.S. market, Koyo characterized some of its sales to OEM customers as being ultimately destined for the aftermarket, but it failed to report these as AM sales as it had done in the home market. Timken asserts that Koyo's inconsistent treatement across both markets shows that its claim with respect to home market level of trade classification is invalid. Timken argues that the Department should reclassify any sales made to OEM customers in the home market as OEM sales, regardless of whether those sales are intended to supply the customer's service or replacement business.

NTN argues that the Department should recognize the existence of the AM level of trade when OEMs are selling to the replacement market. NTN notes that the Department stated in its analysis memorandum that NTN had satisfactorily differentiated its selling expenses for each level of trade, but, in fact, only recognized two of the three claimed levels of trade.

Department's Position: We recognize that some OEM customers also act as distributors and therefore purchase bearings in both markets. The classification of a sale as OEM or AM

indicates the market in which the sale took place. The fact that a customer is an OEM, and purchases the majority of its bearings in the OEM market, does not preclude it from purchasing bearings in the aftermarket for replacement parts, resale, or distribution.

Further, there is no information on the record that suggests that Koyo's claim that its prices and selling costs in the aftermarket are higher than in the OEM market is invalid, or that Koyo's classification of sales is inconsistent across both markets. Therefore, we accepted Koyo and NTN's level of trade classifications.

Comment 12: NTN claims that comparisons across level of trade are incorrect. NTN further argues that a level of trade adjustment based on the differences in indirect selling expenses does not reflect the differences in value, but that a level of trade adjustment based on the price differences between the two levels of trade would accurately reflect the differences in value.

NTN contends that any adjustments for level of trade differences should not be limited to differences in expenses, but should account for the differences in price levels. NTN further claims that the differences in levels of trade represent different commercial quantity levels and different "courses of trade" and therefore should not be compared under 19 U.S.C. 1677(a)(1)(A).

Timken notes that the Department is authorized under 19 U.S.C. 1677b(a)(4) and 19 CFR 353.58 to make an adjustment for differences in levels of trade.

Department's Position: We agree with Timkin. In *Timken II* at 495, 504, the Court of International Trade decided that level of trade was not a relevant, much less a determinative, factor. Furthermore, NTN's argument that a level of trade adjustment should be based on the differences in price levels does not address the issue of whether the difference in price is solely due to the difference in level of trade, or whether other factors affect price. NTN submitted quantifiable evidence which reflects the difference in selling expenses, but because we have already made adjustments for the direct selling expenses, we have based our adjustment on indirect selling expenses only in order to avoid double counting the direct selling expenses (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan (56 FR 41512, August 21, 1991)).

Comment 13: Timken asserts that the Department should merge home market sample sales submitted by Koyo with the home market sales data base, thus insuring that sample sales are included in the margin calculations. Timken argues that Koyo did not demonstrate that its sample sales were not in the ordinary course of trade, and that Koyo's claim for exclusion of "small volume sales made solely for the purpose of providing the customer an opportunity to inspect a given product" is not supported by any evidence and must be rejected by the Department.

Department's Position: Koyo confirmed in its letter to the Department, dated July 19, 1991, that it included sales it regarded as samples in the revised home market sales listing it submitted to the Department on July 8, 1991. Since Koyo only submitted one home market sales listing, which included sales designated by Koyo as sample and non-sample, it was not necessary for the Department to conduct a merge to include sales designated by Koyo as samples.

Comment 14: Timken argues that NTN has erroneously claimed exclusion of certain transactions which it considers outside the ordinary course of trade. These transactions consist of price changes and returns (with the original invoice), zero price sales, sample sales, and small quantity sales. Timken agrees that zero price sales should be excluded as outside the ordinary course of trade, but argues that NTN has offered no proof that its alleged sample sales are outside the ordinary course of trade.

Timken asserts that NTN incorrectly claimed exclusion of its small quantity sales, even though NTN stated that it has no quantity discounts and has not demonstrated any correlation between price and quantity. Timken also notes that sales of similar quantities have not been claimed as outside the ordinary course of trade in the U.S., which, according to 19 CFR 353.55(a), would indicate that sales are being made in comparable quantities in both markets.

NTN argues that the Department has verified the facts surrounding the circumstances of sample and small quantity sales and should therefore exclude the sales as outside the ordinary course of trade.

Department's Position: Due to the significant number of home market sales transactions, we are satisfied that the results of this review are not meaningfully affected by the exclusion of sample sales and sales NTN identified as not in the ordinary course of trade. These transactions are comprised of trial sales for evaluation by customers, sales of sample merchandise, and sales of very small quantities on a spot basis in unusual circumstances. Furthermore, the Department examined Timken's argument that a similar claim for small quantity sales has not been made in the United States and found that, in the few instances where sales of small quantities are made, they are made pursuant to long term contracts, have identical prices, and have the same dates of sale, so would not fall in the same category that NTN has claimed in the home market (where small quantity sales are defined as those of 5 units or less per month sold). Consequently, we are satisfied that these are sales not in the ordinary course of trade, and we have not included them in our analysis (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan (56 FR 41517, August 21, 1991).

Comment 15: Timken argues that the Department must exclude Koyo's home market sales to related parties since Koyo failed to establish that its sales to related parties were at arm's length. Timken asserts that the Department has not performed the kind of analysis to determine whether unrelated prices are at arm's length that it did for NSK. Timken argues that absent detailed analysis demonstrating that sales to related parties are made at arm's length, the Department should exclude Koyo's related party sales from the home market data base for the purpose of the final results.

Department's Postion: We disagree. We performed the same type of analysis on Koyo's sales to related parties in the home market that we did for NSK. The results, which revealed that prices to Koyo's related customers were at arm's length, since, on average, they were higher than prices to unrelated customers, were released to Timken during disclosure of the preliminary results. Therefore, pursuant to 19 CFR 353.45(a), we included Koyo's sales to related parties in our pool of home market sales.

Comment 16: Timken contends that in Koyo and NSK's submission the variable cost information for many models on the sales tape is significantly higher than the variable cost information reported for the same models in the cost of production response. Timken submitted a sample printout to demonstrate the different variable costs for the same model. Timken argues that, due to these differences, the Department should reject both the sales and cost submissions and rely on the best information otherwise available to calculate a margin.

Department's Postion: We disagree with Timken that Koyo and NSK's sales

and cost submission should be rejected due to differences in the variable costs submitted on the sales and COP computer files. Upon examination of the variable costs submitted by Koyo, we are satisfied that the differences in the variable costs are the result of the different periods used to average the variable costs submitted for difmer and COP. That is, variable costs submitted for difmer were averaged over the entire period of review, while variable costs used for COP were averaged over each six month fiscal period of the review. The difference in NSK's cost figures were traced in detail, at the Department's request, in NSK's supplemental submission of July 8, 1991 and we are satisfied that the cost figures have been reported accurately.

Comment 17: Timken asserts that Koyo's inland freight costs on home market sales do not accurately represent Koyo's inland freight costs for the subject merchandise. Timken alleges that Koyo divided freight costs incurred on all merchandise shipped by the sales of all merchandise except steering gear and equipment. Timken argues that, since the numerator of the freight calculation includes freight costs incurred to ship steering gear and equipment, the denominator should include the sales of steering gear and equipment. Timken asserts that if the Department does not have the proper information to be used in the denominator, the adjustment should not be made at all.

Department's Position: We disagree with Timken. Koyo's submitted freight expenses were attributable only to bearing and bearing-related products, not steering gear and equipment. Therefore, Koyo's methodology, which does not allocate freight expenses over sales of steering gear and equipment, is correct. Consistent with the preliminary results, we adjusted FMV using Koyo's submitted freight expense factor.

Comment 18: Timken contends that the Department should not allow home market inland freight from factories to distribution centers, as they claim that it should only be allowed if the storage at the distribution center constitutes a term of the sales contract. Timken additionally argues that NSK inappropriately included such items as fuel expenses in its freight charge. Finally, Timken argues that NSK's allocation of freight based on value rather than weight or volume is inappropriate, because identical items sold to different customers (e.g., at the OEM or AM level) would have different freight allocations.

NSK claims that, because the Department does not treat pre-sale and post-sale movement charges differently in calculating the ex-factory U.S. price, it should not treat them differently in calculating an ex-factory home market price in order to ensure an "apples-to-apples" comparison. NSK also notes that the items which Timken alleges were improperly included in its freight expense were singled out by the verifier in the previous review because they related to pre-sale freight, which the verifier then thought would not be included as a movement expense. Finally, NSK re-iterates the fact that value is the only available way by which inland freight may be calculated and that the Department has consistently permitted value-based allocations of freight expense by NSK (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings From the Federal Republic of Germany, et al. (56 FR 31715, July 11, 1991); Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 19045, May 3, 1989)).

Department's Position: We agree with NSK. 19 U.S.C. 1677a(d)(2)(A), and 19 CFR 353.41(d)(2)(i) require the Department to deduct all inland freight expenses incurred on U.S. sales in order to establish the ex-factory price for sales comparison purposes. There is no explicit provision for deducting home market inland freight expenses from FMV. The Department previously attempted to adjust FMV for home market inland freight expenses as a circumstance of sale adjustment under 19 U.S.C. 1677b(a)(4)(B). In accordance with this provision, however, the Department attempted to limit any adjustments to expenses that were incurred as a direct result of sales under investigation. Consequently, the Department often was unable to grant respondents' claims for pre-sale inland freight expenses because respondents were unable to meet this requirement. This approach leads to unfair comparisons. By denying an adjustment for pre-sale inland freight expenses, the Department would compare an ex-factory price in the United States to an ex-warehouse price in the home market. By deducting pre-sale inland freight expenses from FMV, the Department is able to compare the U.S. ex-factory price with its counterpart in the home market. Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 26054, June 6, 1991), Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 65228, December 16, 1991), Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan (56 FR 41506, August 21, 1991).

We agree with Timken that allocations of freight costs by volume, weight, distance, or a combination of these, are preferable to allocations based on sales value. However, NSK does not maintain records based on weight. Therefore, we have determined that the allocation based on value is reasonable and does not produce distorted results (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (55 FR 22372, June 1, 1990); Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 26057, June 6, 1991)).

Comment 19: Timken argues that the Department should not accept Koyo's methodology for calculating home market credit expenses. Timken asserts that Koyo's calculation methodology is arbitrary because it uses a random number of their largest customers to calculate an average credit period. Timken believes that the average number of credit days outstanding for the largest customers may not accurately reflect the average number of credit days outstanding for a smaller customer. Timken argues that the Department should either deny the adjustment altogether, or recalculate the adjustment using the shortest payment term reported for any major customer as the best information available.

In addition, Timken alleges that the interest rate Koyo used in its credit calculation, which is based on the weighted average of Koyo's short term credit expenses incurred during the period of review, is not accurate. While Timken notes that Koyo stated in its questionnaire response that it "does not discount promissory notes", Timken asserts that Koyo may have discounted promissory notes at a lower interest rate than that which it must pay to finance accounts receivable. Timken argues that this lower rate, which it refers to as the "Gensaki" rate, should be used by the Department for both rates.

Department's Position: We disagree. We view the number of customers Koyo chose to use in its credit calculation as

acceptable since it accounts for the vast majority of its home market sales of covered merchandise during the period of review. While the Department prefers that respondents report credit expenses on a sales-specific basis, we recognize the massive number of transactions in this review, and consider calculations based on average credit days outstanding on a customer-specific basis to be reasonable (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings From the Federal Republic of Germany, et al. (56 FR 31721, July 11, 1991)). The information Koyo submitted is based on the average credit days outstanding on a customer-specific basis, and thereby takes into account the different actual payment periods extended to the majority of different customers.

Additionally, we are satisfied that the interest rate Koyo used in its credit calculation, which is based on Koyo's actual short-term borrowing during the period of review, accurately reflects Koyo's cost of short-term borrowing in the home market. There is no evidence to suggest that Koyo's claim that it does not discount promissory notes is untrue.

Comment 20: Timken argues that NSK's credit expense was incorrectly based on its home market commercial borrowing rate as payments are made mainly by promissory notes. Timken further argues that NSK inappropriately allocated its credit expense over all sales and not on a customer-specific basis.

NSK claims that its home market credit expense was based on actual short-term borrowing rates incurred by NSK and that this practice has been accepted by the Department as a reasonable basis for calculating home market credit where a respondent's records do not permit transaction-by-transaction calculations (Final Determination of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 19053, May 3, 1989)). NSK also contends that it appropriately allocated its credit expense over all sales, as it does not keep its credit expense on a customer basis. NSK argues that this method was accepted in the previous administrative review and was directly related to the sales in question. NSK notes that it was demonstrated, during verification in the previous review, that the credit expenses were derived from ledgers for accounts and notes receivable.

Department's Position: We agree with NSK. It is apparent that NSK took promissory notes into account when calculating its credit rate. Although credit expenses for NSK's home market sales were not calculated on a sale-specific basis, we have accepted as reasonable the reported credit costs. Therefore, we continue to accept NSK's home market credit expense.

Comment 21: NTN argues that the Department incorrectly disregarded compensating deposits in revising NTN's calculation of home market credit. NTN cites the Final Determination of Sales at Less Than Fair Value, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan (52 FR 30704, August 17, 1987) in its claim that the Department has previously accepted such deposits. NTN maintains that, if the Department disregards these compensating deposits, then the nominal interest rate should be used instead of the current formula.

Timken argues that, in the original investigation cited above, the compensating deposits were accepted only because NTN has demonstrated that these deposits were made pursuant to the discounting of receivables, which it has not established in this review.

Department's Position: We agree with Timken that there is inadequate justification to accept NTN's credit cost calculation based on compensating deposits. In our preliminary results, we recalculated NTN's credit costs based on the firm's net interest expense (disregarding compensating deposits) as most representative of the firm's internal cost of funds. Because only purchase price sales by NTN are being analyzed in this review, the recalculated interest expense forms the basis of the credit cost adjustment for both home market and U.S. sales (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings and Parts Thereof From the Federal Republic of Germany, et al. (56 FR 31721, July 11, 1991)).

Comment 22: Timken argues that the Department should not allow an adjustment to Koyo's home market price for warranty expenses incurred in the home market. Timken contends that, since the adjustment to the home market price is based on warranty expenses for all bearing products sold in the home market, not just within-scope merchandise, and since Koyo has not demonstrated that the incidence of warranty costs for all bearings is representative of warranty costs incurred on TRB sales, the adjustment should be denied. At the least, Timken asserts that the Department should remain consistent with the preliminary results and add warranty expenses to the pool of home market indirect selling expenses.

Koyo argues that the Department should not have reclassified warranties as indirect selling expenses because warranties are a direct circumstance of sale adjustment. Koyo claims that the Department considers warranties to be directly related to sales under consideration if the work performed under warranty was anticipated or bargained for at the time of the sale (Forklift Trucks From Japan, 53 FR 12552 (1988)). Koyo asserts that based on its history of warranty claims and course of dealing, the Department should conclude that Koyo's customers anticipated and bargained for these expenses at the time of the sale.

Further, Koyo claims that its warranty expense calculation, which separated bearing from non-bearing warranty expense claims, and then proportionately allocated these expenses to the sale of subject merchandise, should qualify it as directly related to the sales under review according to *Smith-Corona Group* v. *United States* (713 F.2d 1568, 1580 (CAFC 1983)).

Department's Position: We disagree with Timken's assertion that Koyo's warranty expense claim should be denied because Koyo did not directly relate these expenses to sales of TRB's over four inches in outside diameter. However, since Koyo's warranty expenses could not be directly related to merchandise covered by the scope of the order, we have remained consistent with the preliminary results and reclassified warranty expenses incurred in the home market as an indirect selling expense (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 65228, December 16, 1991)).

Comment 23: Timken contends that Koyo's ESP offset claim is inflated by the inclusion of expenses that seem to be administrative rather than selling expenses. Timken notes that administrative expenses not related to sales of the subject merchandise should be excluded. Timken asks that the Department reject Koyo's indirect selling expenses, or at least the line items which Koyo has failed to sufficiently demonstrate as being eligible to be included in the pool of indirect selling expenses.

Department's Position: We agree with petitioner that expenses which are not itemized and linked to the sales department are not classified as indirect selling expenses. However, we have reviewed the information provided in the questionnaire response and have

determined that Koyo properly classified the expenses reported as an indirect selling expense. Therefore, we have not changed this calculation for the final results.

Comment 24: Timken argues that Koyo and NSK have claimed technical service expenses as indirect selling expenses without any demonstration that they were in fact selling expenses, as opposed to production or overhead expenses. Timken asserts that technical service expenses, properly defined, are selling expenses attributable to specific sales. Timken argues that unless Koyo and NSK can identify technical service expenses as being directly related to sales, the Department should deny the claimed adjustment.

Department's Position: We disagree with Timken's contention that, unless a respondent ties its technical service expenses directly to a sale, the Department should deny the adjustment altogether. Therefore, consistent with the preliminary results, we accepted Koyo and NSK's classification of technical service expenses as an indirect selling expense.

Comment 25: Timken argues that, although Koyo characterized all of its home market advertising expenses as indirect selling expenses, Koyo has not demonstrated that these expenses are related to home market sales of bearings with outer diameters over four inches. Timken asserts that, since Koyo reported that its advertising expenses were "essentially institutional in nature", it is likely that its advertising is not aimed at end users and is not limited to the subject merchandise. Therefore, Timken contends, no adjustment should be made for Koyo's claimed advertising expenses.

Timken also claims that NSK's adjustment for advertising should be rejected, as its "company-image" advertising does not relate to bearings and the advertising directed at NSK's customers is not aimed at purchasers of scope merchandise.

Department's Position: We disagree. While such advertising expenses do not directly affect the sale of TRBs over four inches in outside diameter, they promote corporate image and thereby affect indirectly the sale of all a company's products. Additionally, NSK supplied an example of its advertising. This example prominently displays a picture of a bearing and refers to bearings in the text of the advertisement. Therefore Koyo and NSK properly classified these expenses as indirect selling expenses (Final Determination of Sales at Less Than Fair Value, Industrial Forklift Trucks From Japan (53 FR 12552, April 15, 1988)). (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 26055, June 6, 1991)).

Comment 26: Timken argues that the Department should deny Koyo's post-sale price adjustment and rebate adjustment incurred in the home market, or at the least they should be treated as indirect selling expenses. First, Timken contends that Koyo has not established that its rebate programs comply with the Department's requirement that rebates be related directly to specific sales under review and form part of a sales contract. Second, Timken asserts that it is not apparent that Koyo's allocation methodology results in the reporting of rebates and post-sale price adjustments separately. Timken asserts that the Department must presume that they are not reported separately and recalculate the adjustment using only the post-sale price adjustment factor.

Koyo asserts that, since price adjustments are revisions to price and not circumstance of sale adjustments, there is no requirement to establish that price revisions are directly related to specific transactions. Koyo argues that the Department must recognize that prices are established based on factors that cross product lines and include many individual transactions, and not penalize Koyo because its accounting practices do not allocate price adjustments to individual transactions.

Koyo asserts that even if it were correct to classify Koyo's post-sale price adjustments as circumstance of sale expenses, it has shown that these adjustments bear a reasonably direct relationship to sales and therefore do not have to prove that a particular price adjustment amount is related to a particular transaction (*Smith-Corona* v. *United States*, 713 F.2d 1568, 1580 (CAFC 1983)).

Department's Position: We disagree in part with both the petitioner and the respondent. The record demonstrates that Koyo's post-sale price adjustments are an established and accepted commercial practice in the TRB industry (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 26054, June 6, 1991)). We have examined the information provided in the questionnaire response and determined that these price adjustments are made on a customer-specific basis, but cannot be directly tied to the sale for which they were granted. Therefore, consistent with the preliminary results and previous final results issued by the Department (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 26054, June 6, 1991)). (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan (56 FR 41513, August 21, 1991)). (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 65234, December 16, 1991)), we have classified these post-sale price adjustments as indirect, rather than direct, selling expenses and deducted them from FMV.

Koyo's rebate adjustment, which Koyo reported separately from its post-sale price adjustment, is unlike the post-sale price adjustments in that it is based on a set rebate percentage which applied to all merchandise sold to a customer. Therefore, Koyo's rebate adjustment qualifies as a direct adjustment to the home market price since the terms of the rebate remain consistent across the sale of all products.

Comment 27: Timken argues that NSK's rebates, discounts, and commissions should not be allowed as adjustments to FMV.

First, Timken argues that NSK's post-sale price adjustments post-sale price adjustments should not be accepted for the final results of review, as NSK provided no evidence that they were other than post-sale "goodwill gestures". Timken further argues that these adjustments were not directly related to specific sales under review, as it has not been demonstrated that they were a term of a sales contract or that the customer was aware that the adjustment might be granted at the time of the sale.

Second, Timken argues that NSK's "return" rebates should not be allowed as an adjustment to FMV. Timken claims that NSK must first demonstrate that these rebates are customer- and sale-specific, and then must provide proof that they are granted on over four inch bearings.

Third, Timken contends that distributor and performance incentives should not be allowed by the Department or, at a minimum, should be treated as indirect selling expenses, as they are allocated on a customer-specific, but not on a product-specific, basis.

Fourth, Timken argues that NSK's discounts for early payments should not be allowed as an adjustment (or should at least be considered as indirect selling

expenses), as they are not directly tied to specified sales.

Fifth, Timken argues that "delivery on behalf of NSK" commissions, "repurchase for urgent delivery" commissions, and "stock transfer between distributor" commissions should all be treated as indirect selling expenses, as they are allocated over the basis of all sales combined.

Finally, Timken agrees with the Department's decision to disallow commissions to related parties.

NSK argues that all rebates, discounts, and commissions in the home market should be deducted from FMV as either price adjustments or circumstance of sale adjustments. NSK claims that its "return" rebates and post-sale price adjustments, are part-number- and customer-specific. NSK further claims that its lump-sum post-sale price adjustments, distributor incentives, and performance incentives are properly allocated on a customer-specific basis, as the figures are drawn from its narrowest accounting records. NSK argues that, where a respondent's narrowest accounting records do not permit separate identification of actual amounts incurred on individual sales, the respondent may allocate amounts incurred with respect to total sales (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings From the Federal Republic of Germany, et al. (56 FR 31717, 31718, July 11, 1991)), Final Determination of Sales at Less Than Fair Value, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 19055, 19056, May 3, 1989)). NSK contends that commissions and discounts should be recorded as direct expenses, as they are recorded on a customer-specific basis. Finally, NSK argues that commissions, which are directly related to services rendered, should be allowed as a circumstance of sale adjustment (or at least as an indirect selling expense) when made to related parties. NSK contends that the Department has determined that sales to related parties were made at arm's length (net of commissions, rebates, and discounts), so the related commissions must also be considered arm's-length transactions. NSK claims that the Department appropriately adjusted foreign market value for credit expense when sales were made to related parties and that credit expenses are no more or less intra-company transfers of funds than commissions.

Department's Position: NSK reported five types of rebates, three types of commissions, and one discount. Because two types of rebates (the performance incentive and the distributor incentive) were granted to the customer as a straight percentage of each sale, we have determined that these discounts are directly related to sales. Thus, performance incentive rebates and distributor incentive rebates are direct adjustments to the home market price since the terms of the rebates remain consistent across all customer-specific sales. The post-sale price adjustment, which is part-by-part and customer specific, and the return rebate, which applies to specific customers, as well as part numbers, are also directly related to specific sales. However, NSK was not able to demonstrate that the remaining rebate (the lump-sum PSPA) (which is only distributor-specific, but not a straight percentage of all sales), and commissions (which are also customer-specific only, but not a straight percentage of all sales) applied to specific sales of covered products. This rebate and these commissions were not granted as a straight percentage of each sale so that, even when reported on a customer-specific basis, a misallocation of the expense may occur between covered and non-covered merchandise. Therefore, we have classified these expenses as indirect selling expenses for the final results of review. We calculated the amount of the adjustment to the home market price for the early payment discounts as if they were indirect selling expenses, since NSK was unable to provide information that ties the early payment discount directly to specific sales of in-scope merchandise. As we have noted in previous reviews, in instances where a respondent fails to provide sufficient information to support its claim that a price adjustment can be tied to a specific sale in the home market, we make the adverse assumption and recalculate the price adjustment in the same manner as we would calculate an indirect selling expense.

With regards to commissions made to related parties, the Department has conducted a test on NSK's home market commissions and we have determined that commissions to related parties were not made at arm's length.

Comments Regarding Calculation of U.S. Price

Comment 28: Timken argues that zero price sample sales should be included in the U.S. sales data base. Timken contends that NSK has failed to demonstrate how these sales are outside the ordinary course of trade.

NSK argues that the Department correctly excluded zero price sample sales, as such sales are, by definition, outside the ordinary course of trade.

Department's Position: We agree with NSK. NSK's general and administrative expenses include a line item for sample sales. Therefore, it would be inappropriate to analyze those sample sales with zero prices because we have already accounted for them in the adjustment for general and administrative expenses (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 26059, June 6, 1991)).

Comment 29: Timken argues that the Department should not accept NSK's reported foreign inland freight as an adjustment to U.S. price, as the allocation is based on value, not on weight.

Department's Position: We agree with Timken that allocations of freight costs by volume, weight, distance, or a combination of these, are preferable to allocations based on sales value. However, NSK does not maintain records based on weight. Therefore, we have determined that the allocation based on value is reasonable and does not produce distorted results (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (55 FR 22372, June 1, 1990); Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches of Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 26057, June 6, 1991)).

Comment 30: Timken argues that Koyo's early payment discounts should be attributed to the sales for which the early payment was made. Timken asserts that Koyo's allocation of these discounts on a customer specific basis dilutes the impact that a discount has on a particular sale and reduces the dumping margins on both the individual sales and the overall review. Timken objects to the Department's decision to reclassify early payment discounts as indirect selling expenses. This action, according to Timken, results in an increase in the ESP cap and thus rewards the respondent for not supplying sales-specific data. Timken argues that Koyo must prove that selling expenses in the U.S. market are indirect selling expenses, otherwise the Department should assume that the expense is directly related to the sales under review. Timken contends that the Department should apply the highest early payment discount granted during the period of review to every U.S. sale, or, at the least, accept Koyo's

classification of the adjustment as a direct expense and instead of reclassifying it as an indirect expense.

Department's Position: Koyo granted its early payments discounts on a customer-specific, rather than a sale-specific, basis. As we have noted in earlier reviews, in instances where a respondent fails to provide sufficient information to demonstrate that its adjustment is indirect in the U.S. market, we make an adverse assumption and reclassify them as direct. Therefore, we have changed our calculations for the final results of review.

Comment 31: Timken argues that the Department should reject Koyo's methodology for calculating U.S. credit expenses. Timken asserts that the average credit days methodology, based on the average accounts receivables, is inconsistent and self-serving, since the number of customers used in the calculation changes depending upon the market and the review period. Timken believes that the average number of days credit is outstanding for the larger customers may be radically different from the average for the smaller customers. Timken argues that unless Koyo's credit costs are based on actual payment days for each individual sale, the Department should use the highest credit period of any major customer as the best information available when calculating the final results.

Department's Position: We disagree. Please refer to our response to Comment 19 for an explanation of our position on Koyo's credit calculation methodology.

Comment 32: Timken contends that the Department should not accept NSK's reported average interest rate in the U.S. because it is based on a three-month moving average rate and it is not apparent if the reported short-term borrowing rates are based on rates in Japan or in the U.S. Timken urges the Department to use the actual U.S. borrowing rate for NSKC, as Timken claims that to do otherwise would not reflect an arm's-length transaction.

NSK argues that it based its U.S. interest rate on the short-term U.S. borrowing rate actually incurred.

Department's Position: We agree with NSK. NSK clearly explained in its response the calculations used to arrive at its short-term interest rate and the Department is satisfied that the reported credit expense reflects an arm's-length transaction and not an intra-company transfer of funds.

Comment 33: NSK contends that NSK's credit expense should be adjusted to account for the cost of credit between the date of the post-sale price adjustment and the date of payment. NSK reported two credit costs. The first, "CREDITE1", represents the cost of credit between the date of shipment (date of sale) and the date of payment, based on the original invoice amount. The second, "CREDITE2", reflects the increase or decrease in the cost of credit associated with the post-sale price adjustment. NSK argues that the Department denied the "CREDITE2" adjustment because it did not want to make an adjustment in the U.S. without making a corresponding adjustment in the home market, as both markets have post-sale price adjustments. NSK claims that, rather than permitting an inequitable adjustment, the "CREDITE2" adjustment allows the preservation of comparability to the home market sale, because the home market credit expenses are based on the average balance of accounts receivable. NSK argues that the Accounts Receivable in the home market are adjusted monthly to account for post-sale price adjustments and the credit expense is calculated on the basis of the average balance of accounts receivable, so the home market credit expense would already account for the post-sale price adjustments.

Department's Position: We agree. Because NSK's home market credit expense is calculated based on the average balance of accounts receivable, the effect on credit of post-sale price adjustments is already incorporated into the home market credit expense. Consequently, a similar adjustment in the U.S. provides for a more equitable analysis and we have included "CREDITE2" in our analysis of U.S. price.

Comment 34: Timken argues that the Department should re-allocate NSK's technical service expense over U.S. OEM sales only. Timken claims that the services performed at NSKC's technical center mainly benefit OEMs, not distributors or after-market customers.

NSK contends that technical services relate to both OEM and AM sales. NSK further points out that the majority of NSK's sales are to OEMs. NSK cites the first administrative review of antifriction bearings, where the Department determined that "[t]here is no evidence that NSK's technical services expenses were incurred exclusively for its OEM sales" (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings From the Federal Republic of Germany, et al. (56 FR 31723, July 11, 1991)).

Department's Position: We agree with NSK. In accordance with Final Results of Antidumping Duty Administrative Review, Antifriction Bearings From the Federal Republic of Germany, et al. (56 FR 31723, July 11, 1991), and Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 65228, December 16, 1991), we will continue to accept NSK's technical service expense in the U.S.

Comment 35: Timken contends that Koyo has not demonstrated that its commission expense is related to sales since Koyo does not distinguish between commissions paid for sales of the subject merchandise and commissions paid for sales of other products. Timken alleges that Koyo improperly attributed commissions to sales where the independent agents did not sell the subject merchandise and diminished the commissions on sales where the independent agent did in fact sell the subject merchandise. Timken proposes that the Department use the highest commission rate that Koyo reported for the purposes of the final results.

Department's Position: We disagree. Koyo reported that the commission it pays to independent sales agents does not depend upon the customer or class of customer and covers all products to a given account. Koyo calculated a separate expense factor for each sales agent that sells the subject merchandise. While the Department prefers that respondents report commission expenses on a sales-specific basis, we recognize the massive number of transactions in this review and consider Koyo's reported commission expenses to be the result of a reasonable allocation methodology that accurately reflects Koyo's commission expense in the U.S. market.

Comment 36: Koyo asserts that the Department erroneously changed the factor used in the preliminary results to calculate warranty expenses incurred in Japan on sales made in the United States. Koyo asserts that the same warranty expense factor that it reported in its narrative submission was reported on the computer tape submitted to the Department. Koyo notes that it confirmed the warranty expense amount and the calculation of this expense factor in its response to a supplemental questionnaire issued by the Department. Therefore, Koyo argues, the Department should change its computer program to apply the warranty expense factor as Koyo reported it.

Department's Position: Upon examination of Koyo's comment, we realized that Koyo's claim did not constitute a warranty adjustment within the meaning of section 772 (d) and (e) of the Tariff Act. Therefore, for the final

results, we have not made this adjustment to U.S. price.

Comment 37: Koyo and NSK object to the practice of deducting direct selling expenses incurred in the United States from ESP.

They claim that this practice is erroneous as a matter of law, and that, in order to properly account for direct selling expenses incurred in the United States, the Department must make an upward adjustment to FMV, not a downward adjustment to ESP.

Koyo and NSK assert that in Timken II at 495, the Court of International Trade (CIT) rejected the Department's practice of subtracting direct selling expenses from ESP. According to Koyo and NSK, the CIT concluded that U.S. direct selling expenses are "differences in circumstances of sale", which are properly accounted for under section 773(a)(4) of the Tariff Act. Under that statutory provision, differences in circumstances of sale shall be accounted for in the calculation of FMV, not ESP.

Koyo and NSK contend that the Department has violated a straightforward judicial ruling governing this point, and consequently has artificially inflated the weighted average margin applied to Koyo's entries covered by this review.

Department's Position: We respectfully disagreed with the Court's position on this issue in the Final Results of Redetermination Pursuant to Court Remand (March 22, 1990). The Court held that the Department could not deduct direct expenses from ESP under section 772 of the Tariff Act. According to the Court, the Department must adjust FMV pursuant to section 773 of the Tariff Act. We maintain that section 773 of the Tariff Act does not preclude us from deducting selling expenses from ESP. Consequently, we have applied our longstanding practice of making adjustments for direct expenses in ESP cases under section 772 of the Tariff Act (see Final Results of Antidumping Duty Administrative Review, Antifriction Bearings from Germany, et al., (54 FR 31721, July 11, 1991), Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers From Mexico, (56 FR 1794, January 17, 1991), Final Results of Antidumping Duty Administrative Review, Brash Sheet and Strip From Sweden, (55 FR 49317, November 27, 1990), Final Determination of Sales at Less Than Fair Value, Gray Portland Cement From Mexico, (55 FR 29244, July 18, 1990)).

Comment 38: Koyo argues that the Department should recalculate its profit on further manufacturing to take into account both U.S. inventory carrying costs and credit. Koyo has discovered in reviewing the preliminary results that it inadvertently failed to account for U.S. credit expenses when it calculated profit on further manufacturing. Koyo claims that, since the Department has a computer program available to perform this calculation, it should recalculate the profit adjustment, rather than using the profit adjustment submitted by Koyo. Further, Koyo argues that since the Department calculated U.S. inventory carrying costs—which the Department did not request Koyo to report—it should recalculate profit on further manufacturing to account for this additional expense.

Department's Position: We agree with Koyo that since we adjusted ESP for U.S. inventory carrying costs we should also recalculate the profit adjustment submitted by Koyo to account for this expense. Therefore, for the final results, we have recalculated profit according to the methodology employed in previous administrative reviews of this order.

Comments Regarding Cost of Production Issues

Comment 39: Timken argues that Koyo's methodology used to adjust its basic costs (or standards) in its COP response is deficient. Timken asserts that since Koyo's actual material price and manufacturing variances used to adjust the basic costs were calculated at the plant level, there is no complete definition of unit value at the production line level. Timken believes that Koyo's "top-down" allocation of actual costs can create significant distortions in the final determination of unit cost, especially where both scope and non-scope merchandise are produced in the same plant. Timken contends that the Department has stated that where variances are not specific to a product, the foreign producer bears the burden of showing that its methodology constitutes an acceptable alternative. Timken believes that the COP verification report issued for the 1987–88 review period demonstrates that Koyo's methodology is not an acceptable alternative.

Department's Position: We examined Koyo's cost system and found it acceptable. Its standard costs are adjusted to actual costs by the variances incurred at each factory. Koyo calculated the plant-wide variance by comparing the total plant-wide actual costs of production with the plant-wide standard costs, which we determined did not distort model-specific costs of production. Therefore, as in previous reviews of this order, we relied on the reported cost of production to calculate the final results of review (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan (56 FR 41513, August 21, 1991)).

Comment 40: Timken challenges Koyo's claim that its actual materials cost data is reasonable and accurate. Timken, citing the 1987–88 cost of production verification report, questions whether Koyo's purchases from related subcontractors during this review period were made at arms-length, and whether the related suppliers can accurately account for their manufacturing costs in a manner that accurately reflects their unit costs. Timken asserts that Koyo has failed to present evidence on the record to show that the Department's assessment in the 1987–88 verification report is inaccurate, or has been reformed in the context of this review. Timken contends that the Department should determine the highest material cost for each component produced, whether related or unrelated, and apply statutory minimums for SG&A and profit as an alternative to material costs submitted by related subcontractors.

Department's Position: Petitioner's comments address deficiencies noted in the verification report for the 1987–88 review of this order. We examined the information provided in the questionnaire response for this review and determined that Koyo appropriately accounted for the cost of materials originating from its related suppliers and sub-contractors. Therefore, we made no changes to our calculations for the final results of review.

Comment 41: Timken argues that Koyo's use of a standard corporate hourly rate to calculate labor expenses results in inaccurate labor costs. Timken contents that Koyo's methodology reflects the labor costs of divisions not involved in the production of the subject merchandise, where there may be differences in the gender of workers and average years employed. Timken argues that because Koyo's methodology fails to report labor costs attributable to manufacture of the product under review, the Department should use the highest labor rate submitted by Koyo for any plant or division that forms a component of the corporate-wide labor rate.

Department's Position: We disagree. We accepted the corporate-wide labor rate because the other products produced by Koyo involve similar manufacturing processes as those processes required for the subject merchandise. Therefore, we believe that no distortion occurred as a result of using this rate.

Comment 42: Timken believes that the Department should reject Koyo and NSK's calculation of interest expense when calculating COP. Timken asserts that Koyo and NSK have not demonstrated that the interest income it received during the review period was related to TRB production or even to specific plants where TRBs were produced. Timken argues that, according to Departmental practice, Koyo and NSK are only allowed to offset its interest expense by short-term interest income directly related to the production of the subject merchandise. Timken asserts that the Department should remove any offset for interest income, and recalculate the interest expense.

Department's Position: We disagree with Timken. When calculating COP, the Department allows respondents to offset their interest expense with short-term interest income earned on working capital investments. We are satisfied that the interest income NSK and Koyo reported meets this requirement. However, in the case of NSK, the resulting net interest expense is negative, therefore, we have set the interest expense to zero.

Comment 43: Timken refers to several problems with the verification of Koyo's submitted SG&A expenses in the 1987–88 review period. For example, during that review period bonuses for directors and statutory auditors were paid from retained earnings. Additionally, Timken states that the Department could not tie SG&A figures submitted for the 1987–88 review period to Koyo's financial statements. As a result, Timken concludes that the Department should use the statutory minimum for SG&A as the best information available for the present review.

Department's Position: Petitioner's comments address deficiencies noted in the verification report for the 1987–88 review of this order. We examined the information provided in the questionnaire response for this review and determined that Koyo appropriately reported their SG&A expenses. Additionally, we determined that the amount of bonuses for directors and statutory auditors' fees is insignificant within the meaning of 19 CFR 353.59. Therefore, we did not change our calculations for the final results of review.

Comment 44: Timken claims that the Department should reject NSK's material costs in favor of best information available based on the cost verification from the previous review period. Timken claims that NSK's raw material costs do not accurately reflect the total cost of inputs. Timken further argues that the Department should reject NSK's material costs based on transfer prices, as NSK has not demonstrated that its transactions with related suppliers were made at arm's length. Timken refers to the verification report from a previous review period, where Timken claims the Department was unable to determine that transactions with related subcontractors were arm's-length transactions.

NSK argues that the Department verified NSK's cost accounting system in the previous review. NSK cites the verification report to argue that the Department verified NSK's material types and standard material usage rates, its annual material costs, and that NSK based its cost accounting system on actual material costs. NSK contends that, while NSK was not able to tie its material usage variances to its financial records, the verifier was satisfied with NSK's explanation of the variance calculation and found it to be a reasonable approach (see Home Market Verification Report at 21 (April 15, 1991)). NSK argues that the Department was not able to determine the arm's-length nature of transactions with related suppliers because comparison parts to those sold by related suppliers were not sold by unrelated suppliers. NSK claims that in the antifriction bearing investigation and in the 1986–87 review of under four inch TRBs, the Department determined that NSK's related subcontractors were profitable. NSK further cites the Japanese "Law of Prevention from Delayed Payment, etc., to Subcontractors", which prohibits NSK from setting prices to related subcontractors/suppliers at unreasonably low prices. NSK claims that it is required by law to protect the profitability of its related affiliates.

Department's Position: The Department has no information which suggests that there is comparable merchandise with which we could determine the arm's-length nature of transactions with related suppliers. Additionally, because NSK's cost of production response verified as accurate overall in the 1988–89 review of TRBs, four inches or less, we continue to accept NSK's data.

Comment 45: Timken argues that NSK's depreciation expense may be erroneous, as it is not apparent whether or not idle assets have been depreciated. Timken argues that the Department should take the highest depreciation for any bearing and apply it to all bearings as best information available.

NSK argues that the Department must adhere to the foreign Generally Accepted Accounting Principles (GAAP) used in the home country, unless there are material differences between U.S. and home country GAAP. Under Japanese GAAP, depreciation of idle assets is included in general and administrative expenses, not in the operating expenses.

Department's Position: We agree with Timken's assertion that depreciation on "idle assets" should be included in the submitted costs. However, there is no evidence on the record that suggests that idle assets are not being depreciated.

Comment 46: Timken argues that the Department should increase NSK's cost of production to account for write-offs and write-downs of inventory, as they were not included in NSK's cost of production, but in its non-operating expenses (Final Determination of Sales at Less Than Fair Value, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 19076, May 3, 1989)).

NSK argues that this accounting adjustment has no bearing on the cost of actually producing the merchandise. NSK further argues that, if the Department should decide to include write-offs and write-downs of inventory in the cost of production calculation, all income or credits generated by these transactions should be offset to arrive at the actual costs incurred by NSK.

Department's Position: We agree with Timken that these costs should be included in the reported data. We agree with NSK that all incomes or credits generated by these transactions should be used as an offset to the expense. However, there is no information in the financial statements indicating that these costs have not been included. Therefore, we made no adjustment to NSK's costs.

Comments Regarding Use of Best Information Available

Comment 47: NSK argues that the Department incorrectly applied best information available when unable to find COP and constructed value information that the Department had requested. NSK claims that the Department never requested the cost data in question and therefore should not use the best information available under 19 U.S.C. 1677e(c). NSK cites the Department's COP questionnaire, which required respondents to:

> furnish production costs that coincide with the costs to produce the reported home market sales, *e.g.*, assuming a one month lead time to produce this merchandise, the production cost period for this questionnaire would be September 1, 1989 through August 30, 1990. (emphasis added)

NSK claims that the Department explicitly identified the production cost period in its questionnaire. NSK maintains that the Department may not apply punitive best information available when NSK has cooperated fully in supplying information requested by the Department.

Department's Position: We disagree with NSK. The Department did, in fact, request all cost of production information of the reported home market sales. The specific time period to which NSK refers was provided by the Department as an illustrative example to facilitate NSK's determination of the appropriate cost period. If NSK's lead time had actually been only one month, then all of the necessary cost information would have been captured in the example period. If NSK's lead time had been other than one month, which it appears it must have been, it would result in a different cost production period. Therefore, NSK did not provide all of the information requested by the Department and we will continue to apply best information available where cost information for constructed value analysis is missing.

Comments Regarding Clerical Errors

Comment 48: Timken and NTN argue that, in the constructed value FUPDOL calculation for NTN, the Department subtracted "OTHEXP1" from FMV instead of adding it.

Department's Position: We agree and have corrected the program for the final results of review.

Comment 49: Timken argues that, in line 184 of NSK's public program, the Department used the cone number instead of the cup number to create the new model.

Department's Position: We agree and have corrected the program for the final results of review.

Comment 50: NTN argues that there are various programming errors in the preliminary margin program. First, NTN incorrectly stated that its related party code was "2" and its unrelated party code was "1" and requests that the department account for this error in their programming. Second, NTN erroneously placed the decimal point in its "DISCNTHA–1" variable four places to the left of where it should be and requests that the Department correct this error in the final programming. Third, NTN did not originally report all of its purchase price sales due to an NTN computer error and resubmitted these sales after verification, at the verifying official's request. NTN requests that the revised tape be used in the final analysis. Fourth, the Department pointed out at verification that NTN had committed an error in the total cost calculation for fiscal year 1991. After verification, NTN submitted a revised exhibit which reflected the necessary changes. NTN requests that the Department use the revised SG&A figure for its final analysis. Finally, NTN argues that, in the constructed value FUPDOL formula, the Department added the home market credit and packing variables instead of the U.S. credit and packing variables. NTN requests that the Department add the U.S. variables and not the home market variables in this equation.

Department's Position: We have adjusted the final program to correct the first three errors. The error in the SG&A exhibit did not affect the information NTN submitted on tape, so no adjustment was made for the last error.

Comment 51: Koyo asserts that the Department erred by deducting U.S. inventory carrying costs directly from U.S. price instead of including the adjustment in U.S. indirect selling expenses. Koyo argues that this is contrary to the Department's practice of including inventory carrying costs in the ESP cap.

Department's Position: We agree and will correct this clerical error for the final results.

Comment 52: Koyo asserts that the Department used the wrong weight amount when calculating the movement charges on parts shipped to the United States to undergo further manufacturing. Koyo contends that the Department used the net weight of the entire finished bearing sold in the United States, rather than the net weight of the imported part. Koyo requests that the Department recalculate the movement expense for the final results by using the net weight of the imported part.

Department's Position: We agree with Koyo that, when calculating the movement charges on parts shipped to the United States to undergo further manufacturing, the weight of the imported part should be used. Therefore, for the final results, we have corrected this clerical error to ensure that the weight of the imported part was used in all calculations of movement charges incurred to ship the imported part.

Final Results of Review

As a result of our comparison of United States price to foreign market value, we determine that the following margins exist for the period of October 1, 1989, through September 30, 1990:

Manufacturer/exporter	Margin (percent)
NTN (Caterpillar)	45.95
Koyo Seiko Compay Ltd	23.24
NSK Ltd	4.09
Nachi-Fujikoshi Corperation	* 45.95

* No shipments during review period.

The Department shall determine and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of TRBs from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The Customs Service shall continue to require a cash deposit of estimated antidumping duties for all merchandise produced or exported by any of the companies covered by this review, based on the final rates for the above period; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews, or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, another review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the final results of the most recent review in which the manufacturer received the company-specific rate, or the rate for the manufacturer from the less-than-fair-value investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firms, will be 45.95 percent. This is the highest most current non-BIA rate for any firm in this proceeding.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 31, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-3207 Filed 2-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 21, 1991, the Department of Commerce published the preliminary results of its 1989-90 administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan. The review covers there manufacturers/exporters of the subject merchandise to the United States during the period August 1, 1989, through July 31, 1990.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of comments received, we have adjusted the margins for some companies.

EFFECTIVE DATE: February 11, 1992.

FOR FURTHER INFORMATION CONTACT: Sheila Baker or Laurel LaCivita, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding (41 FR 34974, August 18, 1976 (the 1976 finding)) on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan, in the **Federal Register** (56 FR 23278). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are sales of tapered roller bearings (TRBs), four inches or less in outside diameter, when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. The HTS item numbers are provided for convenience and Customer purposes. The written description remains dispositive.

The review covers three manufacturers/exporters of TRBs during the period August 1, 1989, through July 31, 1990: Koyo Seiko Company, Ltd. (Koyo), NSK Ltd. (formerly Nippon Seiko, K.K.) (NSK), and Nachi-Fujikoshi Corporation (Nachi). Nachi reported no shipments.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner and two respondents, we held a hearing on July 9, 1991. We received case and rebuttal briefs from petitioner, Koyo, and NSK.

Comments are addressed in the following order:

1. General Issues
2. Annual Average Foreign Market Value, Model Match, and Cost Test Methodology
3. Calculation of Foreign Market Value
4. Calculation of U.S. Price
5. Comments Regarding Cost of Production
6. Comments Regarding the Use of Best Information Available
7. Clerical Errors

Comments Regarding General Issues

Comment 1: The petitioner, The Timken Company (Timken), argues that the Department should have included in this review all products within the scope of the finding that are admitted to a foreign trade zone (FTZ) or subzone. Timken also argues that the Department requires respondents to post cash deposits in the amount of the estimated antidumping duties upon all TRBs subject to the scope of this finding admitted to FTZs.

Department's Position: We disagree with petitioner's assertion that at the time the subject merchandise was admitted into an FTZ, it was subject to an antidumping review and the collection of duties regardless of whether they enter U.S. customs territory as merchandise subject to the antidumping finding. Section 751 of the Tariff Act instructs the Department of determine "the foreign market value (FMV) and U.S. price of each *entry* of merchandise subject to the antidumping duty order", and the "amount, if any, by which the foreign market value of each entry exceeds the U.S. price of the entry." (Emphasis added.)

Under the Department's practice, at the time the merchandise subject to this review was admitted into FTZ, the merchandise was not subject to antidumping duties. As we stated in the final results of review on Antifriction Bearings From the Federal Republic of Germany, et al. (56 FR 31703, July 11, 1991) and Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan (56 FR 41506, August 21, 1991), our understanding of the term "entry" in the antidumping law is that it unambiguously refers to release of merchandise into the customs territory of the United States. Importers were allowed to elect privileged or non-privileged status of TRBs admitted to FTZs. To the extent that TRBs were admitted into an FTZ in a non-privileged status and transformed into merchandise not subject to the finding before entering U.S. customs territory, the Department currently has no basis for the assessment of antidumping duties on the merchandise.

The Department recently adopted regulations governing FTZs that address this issue, but they are effective only for merchandise entering an FTZ on or after November 7, 1991 (with some exceptions) (Foreign Trade Zones in the United States; Final Rule, 56 FR 50790 (1991)) (to be codified in 15 CFR Part 400). Under these rules, items subject to an antidumping duty order must be classified as privileged on admission to the FTZ and will therefore be subject to antidumping duties on entry, even if transformed in the FTZ into goods not subject to the order. Respondents will be required to post cash deposits equal to the amount of estimated antidumping duties on all TRBs entered through FTZs (however transformed) on or after November 7, 1991.

Comment 2: Timken argues that, according to 19 USC § 1677F (sic), the Department should collect interest on under-deposits of antidumping duties from Koyo and NSK, *i.e.*, interest on the bonds posted previous to the time the Department imposed cash deposit requirements on entries of the subject merchandise. Koyo argues that it is not liable for interest on antidumping duties that are assessed on entries of TRBs where Koyo has not been ordered to make cash deposits on such entries.

Department's Position: We agree that the only statutory authorization for assessing or paying interest on under-payments or over-payments of amounts deposited for antidumping duties is section 737(b), which provides that if the amount of an estimated antidumping

duty deposited under section 736(a)(3) is different from the amount of the antidumping duty determined under an antidumping duty order issued under section 736, then the difference shall be (1) collected, to the extent that the deposit under section 736(a)(3) is lower than the duty determined under the order, or (2) refunded, to the extent that the deposit under section 736(a)(3) is higher than the duty determined under the order, together with interest as provided by section 778. The amount of estimated antidumping duty deposited referred to in section 736(a)(3) is only a cash deposit, not a bond. See also, 19 CFR 353.24. Cash deposits were first required on entries of this merchandise manufactured by Koyo and NSK on June 1, 1990. Consequently, interest will only be collected or refunded on under- or overpayments of cash deposits on entries after that date. The Department's interpretation has been upheld by the CIT (*Timken* v. *United States*, Slip. Op. 91–95, October 25, 1991).

Comment 3: Timken argues that the Department should include the Japanese consumption tax in foreign market value (FMV) and make a corresponding upward adjustment to U.S. price. Timken asserts that according to the statute and judicial precedent (*Zenith Electronics Corp.* v. *United States*, 10 CIT at 276, (1986)), the Department may not make an adjustment for consumption taxes forgiven on exports by simply deducting the tax from FMV. Rather, Timken argues, an upward adjustment in the amount of the tax must be made to U.S. price.

Department's Position: We have added an imputed consumption tax to the U.S. price according to section 772(d)(1)(C) of the Tariff Act. Because the statute directs us to adjust for home market consumption taxes through an addition to U.S. price, we generally used tax-inclusive prices in each market to calculate a dumping margin. No consumption tax was added to the U.S. price when the FMV was based on constructed value because section 773(e) of the Tariff Act does not provide for the inclusion of any tax in constructed value (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings and Parts thereof from the Federal Republic of Germany, et al. (56 FR 31729, July 11, 1991)).

We calculated the addition to U.S. price by applying the home market tax rate to the net U.S. price after all other adjustments were made. This "ex-factory" tax basis for U.S. price is the best information available (BIA) because the home market sales were reported net of the consumption tax. In order to ensure a tax-neutral absolute margin, we made a circumstance-of-sale adjustment to FMV to offset any difference in the home market and U.S. tax.

Comment 4: Timken asserts that the Department should presume that home market selling expenses are indirect and that U.S. selling expenses are direct, absent proof to the contrary. Timken argues that this reasoning was upheld in *Timken* v. *United States* 673 F. Supp. 495 (CIT 1987) (Timken II), when the Court of International Trade (CIT) recognized that respondents benefit when selling expenses are classified as direct in the home market and indirect in the United States. Timken contends that, since respondents possess the information necessary to support the claim, the burden is placed on them to prove that U.S. selling expenses are indirect and home market selling expenses are direct.

Timken cites NSK's failure to tie its home market rebates, discounts, and commissions directly to the sale of the subject merchandise as an example of a respondent's inadequate proof that an expense is direct in the home market. Timken maintains that the Department correctly classified these adjustments as indirect.

Department's Position: Timken is correct in its assertion that the burden is placed on the respondent to prove that U.S. selling expenses are indirect and home market selling expenses are direct. We classify expenses in each market based on the information submitted during the review and on the Department's verification reports. In instances where a respondent fails to provide sufficient information to support its claim that an adjustment is directly related to a sale in the home market, we will generally reclassify the adjustment as indirect. Likewise, when a respondent fails to provide information to support its claim that an adjustment is indirect in the U.S. market, we generally reclassify the adjustment as direct.

For the final results, where NSK failed to tie home market rebates, discounts, and commissions directly to a sale, the Department again classified these as indirect adjustments (see our response to Comment 24).

Comment 5: Koyo requests that, in light of the clerical errors noted after the issuance of the preliminary results, the Department release the computer program used in TRB proceedings for review by interested parties prior to issuing the final results. Koyo notes that the Department released the computer programs used in the antifriction bearings proceeding before issuing the final results. Koyo argues that the Department's current practice of releasing the computer programs after the final results are issued makes it impossible for errors to be identified and corrected before litigation challenging the results must be commenced in the CIT. The result, according to Koyo, is that a respondent may be required to provide estimated duty deposits on the basis of final results that contain clerical errors.

Department's Position: We disagree that it is impossible for the parties to identify clerical errors and provide meaningful comment on the computer program if they do not have access to the calculations prior to the issuance of the final results of review. All parties obtain access to the Department's program when the preliminary results are issued, and are provided the opportunity to comment on any clerical errors at that point in the proceeding. Unlike the AFB proceeding, where the Department had concluded only its first administrative review when it released the computer programs prior to the issuance of final results, the TRB proceeding's lengthy history has afforded the Department the opportunity to refine its program and calculate the final results with few, if any, errors. Indeed, Koyo noted only three clerical errors after the preliminary results were issued in this review. No clerical errors were noted by Koyo following the issuance of the final results in the 1987–88 review. Further, the Department's regulations provide parties an opportunity to request disclosure after issuance of final results and to identify and comment on any clerical errors in the calculations (19 CFR § 353.28).

Comment 6: Koyo and NSK argue that the Department should terminate the 1989–90 review. They assert that the Department was able to initiate this proceeding only because the Department acted in an improper fashion in conducting its review of the 1974–79(80) period. Koyo and NSK believe that the margins for those years should have been zero or *de minimis*. Had the Department completed its earlier review, the finding would have been revoked with respect to Koyo and NSK, and their shipments during the 1989–90 period would not have been subject to review. If the present review is not terminated, it should be discontinued until final disposition of the 1974–79(80) review.

Department's Position: Koyo and NSK are raising issues which are relevant to a different segment of the proceeding, and we have addressed those issues in our final results of review for the 1974–

79(80) period, published June 1, 1990, in the **Federal Register**. The issues in those final results are not pertinent to this segment of the proceeding. Judicial proceedings for the 1974–79(80) segment are underway. Based on our final results of review for the 1974–79(80), 1986–87, 1987–88, and 1988–89 periods, the Department is required to proceed with subsequent administrative reviews.

Comments Regarding Annual Averaging of Foreign Market Value, Model Match, and Cost Test Methodologies

Comment 7: Koyo argues that section 777A of the Tariff Act authorizes the Department to use averaging techniques to establish U.S. price and FMV only when such averaging techniques yield fair and representative results. Koyo believes that, regardless of whether an annual weighted-average FMV is as representative of home market prices as a monthly weighted-average FMV, the Department has failed to demonstrate that its use leads to margin calculations which are representative.

Koyo further submits that the Department's claim that the annual weighted-average FMV is as representative as the monthly weighted-average FMV is flawed. Koyo believes that the Department's determination that 98 percent of the home market sales have an annual weighted-average price that falls within 10 percent of the monthly weighted-average price is insufficient grounds for using an annual weighted-average FMV. Koyo believes that a 10 percent variance can have a dramatic, distortional effect on the margin calculation because it can increase the margin by as much as 10 percent, and produce findings of dumping where no dumping occurred. Koyo believes that this problem is further exacerbated by the Department's practice of not crediting respondents with negative dumping margins on sales made in the United States at prices above those in the home market.

Koyo asserts that, since the Department has already gone to the effort of calculating a monthly weighted-average FMV, it should use the monthly FMV in its margin calculations since it is a more contemporaneous match than an annual weighted-average FMV. Alternatively, Koyo argues, the Department should compare an annual weighted-average U.S. price to the annual weighted-average FMV to insure an apples-to-apples comparison. At the least, Koyo believes that a monthly weighted-average FMV should be used in instances where the annual weighted-average price deviates from the monthly weighted-average price by more than 10 percent.

Koyo argues that the Department's decision to replace the monthly weighted-average FMV with an annual weighted-average FMV without notifying Koyo is contrary to the purpose of U.S. antidumping law. Koyo asserts that the methodology used by the Department to calculate FMV must be predictable to allow the foreign manufacturers the opportunity to adjust their pricing policies.

Finally, Koyo cites section 773(a)(1) of the Tariff Act and § 353.46(a)(2) of the Department's Regulations in support of its argument that the Department must only compare FMVs that are contemporaneous with the U.S. sale.

Department's Position: Section 777A of the Tariff Act requires the Department to ensure that samples and averages shall be representative of the transactions under review. Therefore, before adopting the use of an annual weighted-average FMV, we conducted two studies on prices to ensure that the transactions and, thus, the results produced would be representative. First, we compared the monthly weighted-average price to the annual weighted-average price. We found that the annual weighted-average price for more than 90 percent of the products sold was within 10 percent of the monthly weighted-average price. Second, we tested whether home market prices of the subject merchandise consistently rose or fell during the period of review. We found that no significant correlation existed between price and time. That is, prices did not consistently rise or fall so as to make annual weighted-average prices unrepresentative of home market prices.

Therefore, the results of these tests demonstrate that Koyo's pricing practices remained stable during the review period, thus insuring that an annual weighted-average FMV is as representative of home market prices as the traditional monthly weighted-average FMV. We are satisfied that, if the weighted-average FMV is representative of the home market prices for the period of review, then the margins calculated using the weighted-average prices are accurate.

We disagree with Koyo's assertion that the Department's determination that 98 percent of the home market sales have an annual weighted-average price that falls within 10 percent of the monthly weighted-average price is insufficient grounds for using an annual weighted-average FMV. All averaging techniques, whether they are monthly or annual, result in variances between the actual price and the average price. The fact that over 90 percent of the annual weighted-average prices fall within 10 percent of the monthly weighted-average prices demonstrates that the variances produced by using an annual weighted-average FMV do not differ significantly from the variances produced by using a monthly weighted-average FMV. Furthermore, Koyo offers no evidence that an annual weighted-average FMV results in a systematic bias that would create higher dumping margins than would result from using a monthly weighted-average FMV.

Also, we disagree with Koyo's assertions that, to insure representative results, we must average U.S. prices on the same basis as FMV, or that we must credit respondents with negative dumping margins. Both positions have been, and continue to be unacceptable, because they would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. That is, a foreign producer could sell half its merchandise in the United States at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin. The Department does not encourage selective dumping, nor do we reward a party for not dumping. Except in instances where the Department has conducted reviews of seasonal merchandise which has very significant price fluctuations due to perishability (Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers from Colombia (55 FR 20495, May 17, 1990)), the idea of averaging U.S. prices has been rejected (Final Results of Antidumping Administrative Review, Pressure Sensitive Plastic Tape from Italy (54 FR 13091, March 30, 1989)). Since the merchandise under review is not a perishable product, and our tests of home market sales revealed that there are no significant price fluctuations, there is no reason to believe that averaging of U.S. prices is needed to account for very significant price fluctuations.

The Department notes that the use of an annual weighted-average FMV in calculating margins dramatically simplifies the analysis in this review. Koyo's presumption that we have already gone 'the effort' to calculate an annual weighted-average FMV at the onset of our analysis and, therefore, have completed the complicated calculations, is mistaken. At the onset of our analysis, we compare annual prices, not FMVs, to monthly prices, not FMVs, for representativeness. Upon finding that the annual price is representative, we then calculate an annual weighted-average FMV for a model. Since we

have confirmed that price variations are not correlated with time, there is no contemporaneity issue. The fact that we do not have to make multiple searches for contemporaneous matches results in a dramatic simplification of our analysis, while maintaining the integrity of the representative FMV.

We disagree with Koyo's assertion that our change in methodology has removed predictability from the process. Since such a high percentage of the sales have an annual weighted-average price which falls within 10 percent of the monthly weighted-average price, the calculation of an annual weighted-average FMV, which the Department has used in this review, is no less predictable than the calculation of a monthly weighted-average FMV.

Comment 8: Timken contends that Koyo failed to follow ITA's instructions concerning the reporting of "such or similar" merchandise. In this proceeding, the Department allowed respondents to limit the reporting of home market sales to those models considered "such or similar" merchandise according to the Department's model match criteria. The questionnaire required that the respondents provide the first four such or similar bearings for each comparison model based on the sum of the deviations criteria. If the sum of the deviations is the same for two or more bearings, they are to be ranked according to the similarity in costs, and, if the costs are the same, in alpha-numeric order. Timken charges that Koyo did not examine the cost of production (COP) in order to rank the most similar models. In addition, Timken argues that Koyo applied caps to the deviation of the individual criteria in contravention of the Department's instructions.

In response, Koyo notes that the Department has the necessary cost data to rank the choices of such or similar merchandise according to similarity in costs. Koyo also claims that it conformed to the Department's then current model match methodology when applying the caps to each individual criteria, citing the model match methodology used in the 0–4" 1986–87 TRB review (Final Results of Antidumping Administrative Review, Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof From Japan (55 FR 38720, September 20, 1990)).

Department's Position: We agree with Timken on both points. We permit respondents to limit their reporting of home market models to the first four such or similar models in an effort to limit the administrative burden for the respondents and the Department. With regard to the first point, the Department conducted its own model match and ordered the models according to the similarities in cost. With regard to the second point, Koyo claims that it was relying on the methodology from the 1986–87 review in this proceeding. However Koyo has applied caps to the individual criteria, in direct contravention of the Department's explicit instructions in both the questionnaire for this proceeding and in correspondence on January 3, 1991, from the Department to counsel for Koyo. In this correspondence, while clarifying that the Department was only requiring submission of the first four "such or similar" models sold during the period of review, the letter also "stress[ed] the importance of following the Department's model match methodology exactly as it is described in Section B of the questionnaire".

Where the Department's model match resulted in a different choice than Koyo's model match, and where home market sales information was not submitted for that particular model, we have applied the highest weighted average margin for the period of review as BIA when that model is chosen as the such or similar home market model.

Comment 9: Timken argues that NSK has not used the correct methodology in selecting such or similar merchandise. Timken claims that NSK's program was inaccurate because the selection of such or similar merchandise was limited to comparisons of models with the same precision code, industry code, heat treatment code, and flange code. Timken contends that NSK's inclusion of these five factors in the model match program could result in an exclusion of comparison merchandise from the home market sales listing.

NSK claims that it models match program was designed to carry out the Department's objective of obtaining truly similar comparisons and that neither the Department nor Timken objected to the additional criteria it used to determine comparison merchandise. NSK also contends that, if the methodology it employed is indeed flawed, only 9 percent of the matches could be influenced by the selection process, since 91 percent of the matches in the preliminary margin program were matched with identical models.

Department's Position: We agree with Timken. NSK improperly included additional criteria in its model match program, contrary to the explicit directions of the Department. Where the Department's model match resulted in a different choice than NSK's model match, and where home market sales information was not submitted for that particular model, we have applied the highest weighted-average margin for the period of review as BIA when that model is chosen as the such or similar home market model.

Comment 10: Koyo asserts that the Department's model match methodology is flawed because it does not use a cap on the permissible difference between the home market model and the U.S. model for each of the five criteria used to determine similar merchandise. Koyo believes that without a ten percent cap on the five physical characteristics criteria, dissimilar home market merchandise will be compared to U.S. models.

Department's Position: We disagree that our decision not to apply a 10 percent criterion cap results in the comparison of models which do not constitute similar merchandise. We have based the determination of physical similarity on the smallest sum of the deviations of the five physical criteria. Consistent with section 771(16) of the statute, we determined that all TRBs are alike in the purposes for which they are used (*i.e.* to reduce friction), and we eliminated models that are not of equal commercial value. There is no further requirement that home market models must be technically substitutable, purchased by the same type of customer, or have the same end use as the U.S. model.

Throughout the extended history of the two TRB proceedings, the Department requested input by interested parties and evolved the use of these five physical criteria to identify and compare models sold in the United States and the home market. We are aware that these five characteristics are not substitutes for the technical specifications of the products under review, since TRB product manuals list more than 25 statistics for each bearing. However, we have determined that, for the purposes of selecting similar merchandise in a dumping calculation, these five criteria are the pertinent data to be collected and analyzed.

Comment 11: Koyo maintains that the Department's practice of comparing sales across levels of trade permit inequitable comparisons of U.S. and home market sales, as there is no remedy available to compensate for the differences in level of trade. Koyo cites USC 1677b(a)(1)(A) and section 773(a)(1)(A) of the Tariff Act as the basis to require analysis of sales at the same level of trade only. Koyo also points out that section 353.58 of the Department's regulations supports their position, as it states that the "Secretary

normally will calculate foreign market value and U.S. price based on sales at the same commercial level of trade" (19 CFR 353.58).

Department's Position: We disagree. USC 1677b(a)(1)(A) and section 773 (a)(1)(A) refer to usual commercial quantities and the ordinary course of trade and not to levels of trade. The Department's regulations, in addition to the reference by Koyo, go on to state that "[i]f sales at the same commercial level of trade are insufficient in number to permit an adequate comparison, the Secretary will calculate foreign market value based on sales of such or similar merchandise at the most comparable commercial level of trade" (19 CFR 353.58). The Department has consistently concluded in past reviews that in order to exhaust all possible home market sales of such or similar merchandise before going to constructed value analysis, we must cross levels of trade. See Final Results of Antidumping Administrative Review, Antifriction Bearings and parts thereof from the Federal Republic of Germany et al (56 FR 31710, July 11, 1991); Final Results of Antidumping Duty Administrative Review, Brass Sheet and Strip from Canada (55 FR 31414, August 2, 1990); Final Determination of Sales at Less Than Fair Value, Fresh Cut Flowers from Costa Rica (52 FR 6582, March 4, 1987); Final Determination of Sales at Less Than Fair Value, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan (52 FR 30701, August 17, 1987). This position has been affirmed by the CIT. See *Timken Company* v. *United States*, 11 CIT 786, 674 F. Supp. 495 (CIT 1987); *NTN Bearing Corp. of America* v. *United States*, 747 F. Supp. 726, 743 (CIT 1990).

Comment 12: Timken argues that the model match methodology used in this proceeding is inconsistent with the methodology the Department used in the final determination of sales at less than fair value on Tapered Roller Bearings Over Four Inches from Japan (52 FR 30700, August 17, 1987) (the 1987 LTFV determination). In the 1987 LTFV determination, the Department used the greatest single deviation methodology, in which the largest difference in a single criterion is measured, to determine comparison merchandise. The greatest single deviation methodology measures the percentage difference between each of the five physical characteristics of the home market model and the target U.S. model. It identifies the largest percentage difference for each home market model without taking into account the characteristic that produced the deviation. This largest deviation is known as the "greatest single deviation." It then ranks all the models sold in the home market in comparison to the target U.S. model from the smallest to the largest single deviation. Therefore, the most similar model is the model whose greatest single deviation is smaller than the greatest single deviation of any other model sold in the home market. In this and previous reviews of the 1976 finding (55 FR 22369, June 1, 1990; 55 FR 38721, September 20, 1990; 56 FR 26054, June 6, 1991, 56 FR 65228, December 16, 1991), the Department used the "sum of the deviations" methodology, in which the sum of the differences in U.S. and home market model criteria is measured. Timken asserts that the greatest single deviation methodology is supported by evidence on the record, and can be implemented using the same information the Department collected for the sum of the deviations methodology. Timken addresses a number of additional issues in its argument to have the Department adopt the greatest single deviation methodology in this proceeding.

First, Timken argues that the Department incorrectly concluded that the greatest single deviation methodology unreasonably emphasizes any one of the five criteria when choosing comparable merchandise. Timken notes that changes in any four of the five criteria used to select similar merchandise result in exponential, rather than linear, changes in a bearing's performance characteristics. Thus, Timken believes that the greatest single deviation methodology is sufficient to produce the most similar match. Additionally, Timken contends that when choosing which bearing to purchase, a customer evaluates each criterion independently to ensure that its application requirements will be met. In this same manner, Timken argues, the Department must also evaluate each criterion independently when selecting similar merchandise, thereby remaining consistent with actual commercial considerations.

Second, Timken asserts that the Department does not need to use a 10 percent cap on the deviation of each factor in order to adopt the greatest single deviation methodology. Without such a limit, Timken argues, just as many home market matches will be found with the greatest single deviation methodology as with the sum of the deviations methodology.

Finally, Timken contends that the Department should not reject the greatest single deviation methodology on the grounds that it fails to provide a mechanism for distinguishing between two potential matches when the greatest single deviation is the same. Timken believes that in these situations the Department should examine the next greatest deviating factor, exhausting all the criteria if need be, until a most similar match is found. If two or more bearings are equally similar after all the criteria are exhausted, Timken proposes that the Department use the weighted-average price of all the home market sales of the remaining equally similar choices as the basis for FMV.

Department's Position: In the 1987 LTFV determination, the Department used five criteria to match models employing the greatest single deviation methodology. In this review of the 1976 finding, we also used the five criteria to match models' however, we continued to employ the sum of the deviations methodology, which arose in litigation on final results for other parties covered by the 1976 finding, *Timken* v. *United States*, Slip. Op 84–63 (7 CIT 319) (June 5, 1984) (*Timken*), *Timken* v. *United States*, 630 F. Supp. 1327 (CIT 1986) (*Timken I*), and *Timken II*.

Because of concerns expressed by petitioner and respondents involving the aforementioned inconsistency, the Department extensively reevaluated the selection methodology. We requested input by parties to the proceeding and a TRB manufacturer subject only to the antidumping duty order on TRBs over four inches and parts thereof from Japan. Timken favored the greatest single deviation method, two respondents had no preference, and one respondent favored the sum of the deviations method.

The sum of the deviations method seeks the model with the lowest overall deviation for all criteria combined, while the greatest single deviation method seeks the model for which the greatest deviation for any single criterion is the lowest. While Timken is correct in asserting that the same information collected by the Department can be used to conduct the model match using either methodology, the Department believes the sum of the deviations method is preferable because it uses all five criteria in determining which home market model is the most similar. The greatest single deviation method relies on only one criterion, to the exclusion of all other criteria. In this way, the model match selection using the greatest single deviation relies on a single arbitrary criterion, since the criterion that produces the largest single deviation changes from one match to another for the same U.S. model.

Although Timken asserts that customers choose a bearing by a single criterion, Timken does not specify which criterion is the controlling factor. The criterion that may be important for one customer may be different from what is important to another. There is no evidence that any particular single criterion should be the deciding factor, or that all customers would rely on the same single criterion in deciding which model to purchase. Therefore, even if customer preference were a factor in the determination of the most similar model, the greatest single deviation method does not address the issue of customer preference.

Timken's contention that the non-linear relationships between the criteria and the performance characteristics make it unnecessary to analyze the four criteria that do not have the largest deviation, is not supported by the facts. The record shows that the parties to this proceeding have agreed that all five criteria are important factors to use when determining the similarity of merchandise. In addition, our analysis indicates that one must analyze the differences in all criteria in order to determine the most similar home market match.

Furthermore, the Department cannot select models based on performance expectations, whether those expectations are redundant, proportional, linear, or non-linear, since expectations are not subject to objective analysis. Since the greatest single deviation methodology ignores the relative value of four out of five criteria, it does not take all of the objective factors into account in selecting the most similar match.

Although Timken asserts that the removal of the 10 percent cap in the greatest single deviation methodology would result in the selection of as many home market matches as the sum of the deviations methodology, this was not a critical issue in the decision-making process. We chose to continue to use the sum of the deviations methodology in this proceeding because, as explained above, it provides for the most comprehensive analytical approach in choosing the most similar merchandise sold in the home market.

Finally, while we realize that Timken has provided a method of breaking a tie among two or more matches with the same greatest single deviation from the reference bearing, this does not alter the Department's analysis or conclusion. Because the sum of the deviations method uses all five criteria, instead of a single criterion, it is more discriminating and, therefore, less likely to produce ties in the selection of the most similar merchandise sold in the home market.

Comment 13: Koyo argues that the Department did not properly test home market sales made at prices below COP to determine if they were made over an extended period of time. Koyo asserts that the Department's definition of an extended period of time as three months or more of the review period is unreasonable and contrary to the statute. Koyo submits that a model is sold below COP for an extended period of time only when below-cost sales of that model occur during each month of the review period.

Department's Position: We disagree. Section 773(b)(1) of the Tariff Act is designed to ensure that below-cost sales are not disregarded if these sales occurred over a short period of time or resulted from normal business practices, such as selling obsolete or end-of year merchandise at below-cost prices. TRBs are a commodity item that do not demonstrate perishability, seasonality, or frequent generational changes in models. No information on the record in this case indicates that below-cost sales are a normal practice or characteristic in this industry. We used the period of three months to define an extended period of time since three months is commonly used to measure corporate, financial, and economic performance. Use of three month periods to measure distribution of below-cost sales demonstrates that sales below the COP are not random, accidental, or sporadic. Therefore, we have determined below-cost sales occurring in three or more months of the review period to have been made over on extended period of time.

Comments Regarding Calculation Foreign Market Value

Comment 14: NSK claims that the Department should not match U.S. sales of a certain model with a single sale of two pieces of that same model in the home market. This model accounts for a considerable percentage of NSK's sales in the United States and, except for one small after-market sale, those sales were all made to a single original equipment manufacturer customer. NSK argues that the single sale of two pieces in the home market is outside the ordinary course of trade. NSK states that the model in question is an inch-size bearing intended exclusively for the U.S. market and that, except for five pieces sold in 1983, no sales of that model were sold between 1974 and this period of review. Therefore, NSK argues that the sale in the home market of two pieces departs from its normal course of trade. NSK stresses that the small quantity in itself is not the reason that the sale is outside the ordinary course of trade, but that it is aberrant as "no sale of any quantity was intended in the past" (NSK Case Brief at 9, footnote 6 (June 28, 1991)). NSK claims that comparison of the model in question to the next most similar model would be consistent with 19 CFR 353.55 by using sales of comparable quantities when comparing U.S. and home market sales.

NSK makes the additional argument that the sale of the home market model was not contemporaneous with the U.S. sales according to 19 CFR 353.46(a)(2). NSK claims that, at the time of the sale, NSK had no basis to anticipate that the Department would use a single weighted-average price for the entire period, as sales were still being analyzed under the 90/60 day window approach. NSK argues that the Department should limit comparison to contemporaneous sales for this model.

Timken argues that NSK's submission of certain factual information in its case brief was untimely and should be rejected under 19 CFR 353.31(a)(ii). Timken further argues that the additional information fails to demonstrate that the sale in question was in unusual quantities or outside the ordinary course of trade. Timken states that the sale of two pieces in the home market satisfied none of the traditional criteria (sample sales, prototypes, limited editions, inventory clearance, damaged goods, or obsolete merchandise) that the Department looks for in order to determine sales that are outside the ordinary course of trade.

Timken points out that, while the sale of the set that corresponds to that model was reported in NSK's Section A response, it did not appear in the weighted-average home market sales listing in the preliminary margin program. Timken argues that NSK has neither demonstrated that the sale was of an extremely small quantity at a price substantially higher than the prices of the majority of sales reported, nor established that the price differential is due wholly or in part to the difference in quantity. Timken asserts that the Department should not "hybridize" its annual-average methodology in order to accommodate NSK. Timken points out that under the 90/60 day window period, the sale of two pieces would be matched with the sales of its identical counterpart that occurred in March through July, 1990.

Department's Position: We examined NSK's sales practices and determined that sales of very small quantities were not outside the ordinary course of trade However, in this instance, NSK sol l a

bearing intended exclusively for the U.S. market in the home market. Furthermore, NSK indicated that only one other sale (of five units) has been made in the home market since 1974. This illustrates that the sale was outside the ordinary course of trade. The argument regarding comparable quantities does not apply because NSK did not demonstrate that the "price differential is wholly or partly due to the difference in quantities" (19 CFR 353.55(a)), but merely focused on the fact that the quantities were different. The issue of contemporaneity is not applicable, because we are using a weighted-average value of all models sold during the period of review. Because this sale was made outside the ordinary course of trade, we disregarded the home market sale of this model for the final results of review, and compared the U.S. sales to the most similar model sold in the ordinary course of trade in the home market.

Comment 15: Timken asserts that, in at least one case, Koyo classified certain sales to an original equipment manufacturer (OEM) as after-market (AM) sales. Timken contends that Koyo should not be allowed to classify sales to OEM customers as AM sales even though those sales are intended to supply the customer's service or replacement business. Timken argues that the level of trade is determined by whether the first unrelated customer is itself an end-user or a reseller (distributor), and that the customer's customer is not relevant to a level of trade classification.

Department's Position: We agree with Timken that the customer's customer is not relevant to a level of trade classification. However, we also recognize the fact the some OEM customers also act as distributors and therefore purchase bearings for use in both markets. The classification of a sale as OEM or AM indicates the market in which the sale took place. The fact that a customer is an OEM, and purchases the majority of its bearings in the OEM market, does not preclude it from purchasing bearings in the AM for replacement parts, resale, or distribution. Therefore, we accepted Koyo's level of trade classification.

Comment 16: Timken alleges that Koyo's home market sales listing is incomplete since Koyo did not submit transaction-specific data on sample sales. In response to a supplementary questionnaire, Koyo submitted a listing of its home market sample sale transactions.

Department's Position: We have examined the volume and value of home market sample sales in Koyo's supplementary exhibit and compared it to the revised volume and value of domestic sales and find the amount insignificant for this review.

Comment 17: Timken asserts that NSK excluded sales of certain models from its home market list, because it considered them "not to have been sold in the usual commercial quantities or in the ordinary course of trade". Timken argues that the Department should determine what constitutes the most similar merchandise and that, for the purpose of the final results, the Department should include all aforementioned home market sales in its calculation of FMV.

Department's Position: We agree with the petitioner that the Department should determine what constitutes similar merchandise, either by directly analyzing the entire class or kind of merchandise or through instructions to the respondents.

Altogether, NSK excluded eight transactions as "outside the ordinary course of trade". In this review, such sales constitute an insignificant percentage of NSK's home market sales, and, therefore, we are satisfied that the exclusion of these transactions would not alter the results of the model match.

Comment 18: Timken asserts that, if NSK failed to show that sales to related parties were made at arm's-length prices, the Department must analyze related party sales and determine whether the transactions were at valid, arm's-length prices prior to using related party sales in the final results.

Department's Position: Both Koyo's and NSK's home market sales data revealed that prices to related customers were at arm's length, since, on average, they were higher than prices to unrelated customers. Therefore, pursuant to 19 CFR 353.45(a), we included sales to related parties in our pool of home market sales.

Comment 19: Timken argues that pre-sale inland freight should not be allowed as an adjustment to FMV. Timken asserts that freight costs incurred to ship the merchandise to related warehouses or distribution centers is not allowable as a direct adjustment to price and, therefore, should be excluded. NSK argues that home market inland freight should be treated as a direct expense to conform to the manner in which U.S. movement expenses are treated. NSK claims that the Department should follow the final results of the 1987–88 review in this proceeding and treat all home market inland freight expenses as direct expenses (Final Results of Antidumping Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan (56 FR 26056, June 6, 1991)). Koyo argues that the Department incorrectly excluded home market indirect inland freight because it thought that it was also included in direct expenses (internal inland freight). Koyo stated in its response that it had adjusted indirect selling expenses to exclude expenses reported elsewhere. Koyo also explained in its response that indirect inland freight expenses are pre-sale freight expenses and internal freight expenses are reported as part of indirect selling expenses because they do not directly relate to the subject sales (internal freight expenses include costs incurred at Koyo's distribution centers and branch warehouses, such as fuel, repair, accessories and insurance for forklift trucks).

Department's Position: 19 U.S.C. 1677a(d)(2)(A) of the Tariff Act and 19 CFR 353.41(d)(2)(i) require the Department to deduct all inland freight expenses incurred on U.S. sales in order to establish the ex-factory price for sales comparison purposes. There is no explicit provision for deducting home market inland freight expenses from FMV. The Department previously attempted to adjust FMV for home market inland freight expenses as a circumstance-of-sale adjustment under 19 U.S.C. 1677b(a)(4)(B). In accordance with this provision, however, the Department attempted to limit any adjustments to expenses that were incurred as a direct result of sales under investigation. Consequently, the Department often was unable to grant respondents' claims for pre-sale inland freight expenses because respondents were unable to meet this requirement. This approach leads to unfair comparisons. By denying an adjustment for pre-sale inland freight expenses, the Department would compare an ex-factory price in the United States to an ex-warehouse price in the home market. By deducting pre-sale inland freight expenses from FMV, the Department is able to compare the U.S. ex-factory price with its counterpart in the home market.

Comment 20: Timken argues that the Department should not accept Koyo's methodology for calculating home market credit expenses. Timken asserts that Koyo's calculation methodology is arbitrary because it uses a random number of customers to calculate an average credit period. Additionally, Timken believes that because payment is based on a month's total bills, the credit rate may not accurately reflect the credit terms of the covered merchandise, since the credit rate includes payment

on products outside the scope of the finding. Timken argues that the Department should use the customer specific credit rates for the largest customers reported and then use the lowest credit rate for the remaining customers.

Department's Position: We disagree. We view the number of customers Koyo chose to use in its credit calculation as acceptable since it accounts for the vast majority of its home market sales of covered merchandise during the period of review. While the Department prefers that respondents report credit expenses on a sales-specific basis, we recognize the massive number of transactions in this review, and consider calculations based on average credit days outstanding on a customer-specific basis to be reasonable (Final Results of Antidumping Duty Administrative Review, Antifriction Bearings from the Federal Republic of Germany, et al. (56 FR 31721, July 11, 1991)).

Comment 21: Timken argues that the Department should not allow a direct adjustment for warranty expenses incurred in the home market. Timken contends that, since the adjustment to the home market price is based on warranty expenses for all bearing products sold in the home market, not just within-scope merchandise, it cannot be classified as a directly-related selling expense. Timken asserts that the Department should continue to classify the adjustment as an indirect selling expense.

Department's Position: We agree. Since Koyo's warranty expense could not be directly related to merchandise covered by the scope of the finding, we have classified warranty expenses incurred in the home market as an indirect selling expense for the final results.

Comment 22: Timken contends that Koyo's Exporter Sales Price (ESP) offset claim is inflated by the inclusion of general and administrative expenses. Timken argues that Koyo's reporting of selling, general, and administrative (SG&A) expenses fails to link the expenses to the sales function in the home market. Timken asks that the Department reexamine this issue to insure that Koyo properly segregated general and administrative expenses, and otherwise accurately reported indirect selling expenses.

Department's Position: We are satisfied that the adjustment used for the preliminary results accurately reflects the indirect selling expenses incurred by Koyo in the home market. Accordingly, we have made no change for the final results.

Comment 23: Timken argues that the Department should deny Koyo's claimed adjustment for post-sale price adjustments (PSPAs) and rebates incurred in the home market. Timken cites two reasons in its argument for denying the claimed adjustment. First, Timken contends that, since the rebates reported to the Department were not directly related to particular sales, and the terms of the rebates were not known prior to the date of sale, they should not be permitted as a circumstance-of-sale adjustment. Second, Timken asserts that, since it is not apparent that Koyo's allocation methodology results in the reporting of rebates and PSPAs that are specific to sales of in-scope TRBs, the Department should not even allow the adjustment as an indirect selling expense. Timken argues that, if Koyo is unable to tie the rebates and price adjustments to the specific transactions to which they applied, no adjustment to the home market price is warranted.

Koyo argues that the Department should not have reclassified home market rebates and PSPAs as indirect selling expenses. Koyo believes that, since rebates were allocated only to the customers that received them, and the rebate percentages were set prior to the sale and applied to all merchandise sold, the rebates should be considered directly related to Koyo's sales. Koyo argues that this should be enough to justify a direct adjustment to price since, under *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1580 (CAFC 1983), a circumstance-of-sale adjustment need only have a "reasonably direct relationship" to the sales under consideration.

Koyo asserts that, since price adjustments are revisions to price and not circumstance-of-sale adjustments, there is no requirement to establish that price revisions are related to specific transactions. Koyo argues that the Department must recognize that prices are established based on factors that cross product lines and include many individual transactions, and not penalize Koyo because its accounting practices do not allocate price adjustments to individual transactions.

Department's Position: We disagree in part with both the petitioner and the respondent. The record demonstrates that Koyo's PSPAs are an established and accepted commercial practice in the TRB industry (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan (56 FR 26054, June 6, 1991); Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan (56 FR 65234, December 16, 1991)). Since Koyo has allocated its PSPAs on a customer-specific basis over both scope and non-scope merchandise, we have classified these PSPAs as indirect, rather than direct expenses.

Koyo's rebate adjustment, unlike the PSPAs, is based on a set rebate percentage which applies to all merchandise sold to a customer and, therefore, qualifies as a direct adjustment to the home market price, so we have reclassified it as a direct expense for the final results of review.

Comment 24: NSK argues that its rebates, commissions, and discounts (return system rebates, PSPAs, lump-sum PSPAs, distributor incentive rebates, delivery on behalf of NSK commissions, stock transfer commissions, and early payment discounts) should be considered direct adjustments, as they are customer specific and/or part number specific.

NSK contends that the Department's treatment of rebates, discounts, and commissions as indirect selling expenses is contrary to law and past Department practice. NSK claims that the return system rebate is granted on a claim-by-claim basis and reported on a product and customer-specific basis, so it should be treated as a direct adjustment. NSK also claims that its PSPA is granted on a customer-specific and part-by-part basis and should be afforded direct status. NSK further maintains that, while the lump-sum PSPA is reported on a customer-specific basis only, and it is granted to certain customers on various parts, it is appropriate to treat it as a direct circumstance-of-sale adjustment because it is a direct result of sales and applicable to all products. NSK asserts that its distributor incentive, while reported only on a customer-specific basis, is granted as a percentage of all sales, and may therefore be allocated across all sales. Finally, NSK argues that its commissions, which are customer-specific only, but not a percentage of all sales, should be considered direct expenses, as they are a result of sales.

NSK asserts that rebates reported by bearing manufacturers on a customer-specific basis, according to a consistent and reasonable allocation method, have been treated as a direct expense by the Department, and the Department should not depart from its precedent (Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of

Germany et al. (54 FR 19056, May 3, 1989)). Also, NSK insists that, as with lump-sum rebates, discounts and commissions should be treated as a direct expense since they were allocated appropriately on a customer-specific basis; total discounts or commissions to each distributor were divided by total sales to each distributor, as neither amount was recorded by product.

Department's Position: NSK reported 5 types of rebates, 3 types of commissions, and 1 discount. Because two types of rebates (the performance incentive and the distributor incentive) were granted to the customer as a straight percentage of each sale, we have determined that these discounts are directly related to each sale. Thus, performance incentive rebates and distributor incentive rebates are direct adjustments to the home market price since the terms of the rebates remain consistent across all customer-specific sales. The PSPA, which is part-by-part and customer specific, and the return rebate, which applies to specific customers, as well as part numbers, are also directly related to specific sales. However, NSK was not able to demonstrate that the remaining rebate (the lump-sum PSPA) (which is only distributor-specific, but not a straight percentage of all sales), and commissions (which are also customer-specific only, but not a straight percentage of all sales) applied to specific sales of covered products. This rebate and these commissions were not granted as a straight percentage of each sale so that, even when reported on a customer-specific basis, a misallocation of the expense may occur between covered and noncovered merchandise. Therefore, we have classified these expenses as indirect selling expenses for the final results of review. We calculated the amount of the adjustment to the home market price for the early payment discounts as if they were indirect selling expenses, since NSK was unable to provide information that ties the early payment discount directly to specific sales of in-scope merchandise. As we noted in Comment 4, in instances where a respondent fails to provide sufficient information to support its claim that a price adjustment can be tied to a specific sale in the home market, we make the adverse assumption and calculate the price adjustment in the same manner as we would calculate an indirect selling expense.

Comment 25: NSK contends that commissions and incentive payments which were made only to related parties should be allowed as direct expenses. NSK argues that commissions paid to related parties, when those transactions are shown to be at arm's-length, should be allowed (Dry Cleaning Machinery from West Germany (50 FR 32154, August 8, 1985); Egg Filler Flats from Canada (50 FR 24009, June 7, 1985); Generic Cephalexin Capsules from Canada (54 FR 26820, June 26, 1989); *LMI-La Metalli Industriale S.p.A.* v. *United States*, (CIT 1989), affirmed in part, remanded in part, (Fed. Cir. 1990)).

Timken argues that the Department correctly disallowed the claim for commissions to related parties, as no circumstance-of-sale adjustment is permitted for commissions paid to related parties (Dry Cleaning Machinery from West Germany; Egg Filler Flats from Canada (50 FR 24009, June 7, 1985); Bicycle Tires and Tubes from Taiwan (48 FR 19438, April 29, 1983)).

Department's Position: An adjustment for commissions paid to related parties should be allowed as a proper basis for adjusting price, if such commissions are made at arm's length. (*LMI–La Metalli Industriale S.p.A.* v. *United States*, (CIT 1989), aff'd in part, remanded in part, (Fed. Cir. 1990)). The Department has tested NSK's home market commissions and established that the commissions were not granted equally to related and unrelated parties. For the final results of review, we have excluded commissions made to related parties. The incentive payment rebate, however, is classified as a rebate and not as a commission and has been allowed as a direct adjustment, as it can be directly related to sales of the subject merchandise.

Comment 26: Koyo argues that the Department should not include home market commissions with home market indirect selling expenses. Koyo, referring to 19 CFR 353.56(b), asserts that, when reviewing ESP sales, the Department should treat commissions as direct circumstance-of-sale adjustments.

Department's Position: We agree with Koyo that, in the preliminary results, the ESP offset was inappropriately calculated in the instances in which a commission existed in one market and not the other. Therefore, we have changed our calculation to provide for a separate calculation of the circumstance-of-sale adjustment for commissions and the ESP offset (See Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers from Mexico (56 FR 1794, January 17, 1991)).

Comment 27: Timken argues that NSK's home market credit expense should not be allowed as an adjustment for differences in circumstances of sale because it is not calculated on an invoice-by-invoice basis.

Department's Position: We disagree. While the Department prefers to have credit expenses calculated on an invoice-by-invoice basis, NSK is unable to provide payment dates as it's computer system is unable to track them. The Department finds their calculation of average credit days outstanding to be reasonable. (See Final Results of Antidumping Duty Administrative Review, Antifriction Bearings from the Federal Republic of Germany, et al. (56 FR 31724, July 11, 1991)); Final Results of Antidumping Duty Administrative Review, Portable Electric Typewriters From Japan (56 FR 14074, April 5, 1991))

Comments Regarding Calculation of U.S. Price

Comment 28: Timken claims that Koyo's analysis of expenses involved in further manufacturing in the United States is erroneous. The sales in question have been reported as if they were fully Japan-made products (as Koyo claims it cannot identify which component was produced by Koyo or by some other manufacturer), yet Timken maintains that if the merchandise is "finished", then it is subject to the antidumping finding at issue, and if the merchandise is "unfinished", then it is subject to the antidumping duty order in Tapered roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan. Timken further argues that the products that undergo assembly in the United States are subject to further manufacturing analysis and that, as there is no information on the record indicating even the total value of bearings affected by this practice, the Department should use as best information otherwise available the ranged public figure which indicates the dollar amount of U.S. sales that underwent further manufacturing in the previous period of review.

Koyo agrees with Timken that these sales with one Japan-made component should be, and are, included in the U.S. sales listing used to calculate the dumping margin. Koyo does not agree, however, that these sales should be subject to further manufacturing analysis as they were "combined", not "manufactured".

Department's Position: We agree with both Timken and Koyo that these sales should be included in the calculation of the dumping margin. We agree with Timken that these sales should be analyzed as "further manufactured" products. "Any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported

merchandise after the importation of the merchandise and before its sale to a person who is not the exporter" (emphasis added) (section 772(e)(3) of the Tarrif Act) is subject to further manufacturing analysis. We have used the public ranged number from the previous review (88/89) as BIA for the amount of U.S. sales that were further processed. We have applied to sales of such bearings, as BIA, the highest weighted-average margin in this review for the sales that we determined to be further manufactured.

Comment 29: Timken argues that the Department should include all sample sales in the U.S. sales listing, as Koyo has not provided any support for its assertion that these are sample sales. Timken argues that section 751 of the Act requires that the Department calculate dumping margins on each "entry" of merchandise that is sold in the United States.

Department's Position: We agree. Consistent with the preliminary results we have included all sample sales in our U.S. sales listing.

Comment 30: Timken argues that the Department should not reclassify Koyo's U.S. adjustment for rebates and other PSPAs as indirect selling expenses, because Koyo did not provide the information necessary to tie them to individual sales. Timken contends that the Department should use the highest rebate rate observed among all U.S. sales as the BIA when calculating the final results.

Department's Position: Koyo granted its early payments discounts and rebates on a customer-specific, rather than a sale-specific, basis. As we noted in Comment 4, in instances where a respondent fails to provide sufficient information to demonstrate that its adjustment is indirect in the U.S. market, we make an adverse assumption and reclassify them as direct. Therefore, we have changed our calculations for the final results of review.

Comment 31: Timken objects to the upward adjustment to U.S. price due to the occurrence of a credit balance in the allowance accounts of certain customers. Timken believes that such an adjustment is unwarranted since it is the result of an allowance claimed previously by a customer but disallowed by Koyo. Therefore, Timken contends, the balance relates to previous sales and not to the sale at issue. Timken asserts that the balance does not reflect an adjustment to price, since it is not apparent that the transaction price is affected by Koyo's refusal to permit the customer's claim.

Department's Position: We recognize that Koyo's reported expense experience is based on a snapshot of its accounts for the 12-month period of review. To do otherwise would result in constant adjustments to prices after a review is completed. Therefore, we accepted an upward adjustment to U.S. price in instances where a credit balance exists in the account of certain customers.

Comment 32: Timken objects to the allocation methodology which both NSK and Koyo used to calculate their U.S. technical service expenses. Timken claims that the allocation of these expenses over total sales value over-allocates technical service expenses to higher-priced sales to distributors, who seldom require such services. Timken proposes that the Department re-allocate U.S. technical service expenses to OEM sales, and deduct them as a direct selling expense.

Department's Position: Both Koyo and NSK have stated that they provide technical services to all customers that request assistance, including their aftermarket customers. Therefore, we are satisfied that NSK's and Koyo's allocation methodology for technical services is reasonable.

Comment 33: Timken argues that the Department should reject Koyo's methodology for calculating U.S. credit expenses. Timken asserts that the average credit days methodology, based on the average accounts receivables, is inconsistent and self-serving, since the number of customers used in the calculation changes depending upon the market and the review period. Timken contends that, unless Koyo's credit costs are based on actual payment days for each individual sale, the Department should use the highest credit period of any major customer as the BIA when calculating the final results.

Department's Position: We disagree. Please refer to our response to Comment 20 for an explanation of our position on Koyo's credit calculation methodology.

Comment 34: Timken argues that, since NSK did not support its claim that it incurred no "customer-directed" advertising expenses in the U.S. market, and since selling expenses in the United States are presumed to be direct absent proof to the contrary, NSK's corporate advertising expenses should be deducted from U.S. price as a direct selling expense.

Department's Position: We disagree. We verified NSK's U.S. advertising expense in the last review, and we are satisfied that NSK incurred no direct or "customer-directed" advertising in the United States for TRBs. Therefore, NSK correctly reported its indirect or corporate advertising as part of its U.S. indirect selling expenses.

Comment 35: NSK objects to the use of the U.S. short-term credit rate in the calculation of inventory carrying cost. NSK maintains that because its U.S. subsidiary, NSK Corporation (NSKC), has six months to pay for the imported merchandise, the parent company incurs the cost of keeping the goods in inventory for NSKC. Since it is the time value of the parent's funds being measured and, according to reasonable commercial practice, the parent would borrow at the lower rate in Japan, NSK argues that the Department should use the home market interest rate, which is consistent with commercial reality, to impute the U.S. inventory carrying cost.

Department's Position: We agree with the respondent. Normally, the Department calculates U.S. inventory carrying cost using the U.S. interest rate because the U.S. subsidiary bears the full cost of carrying the merchandise. However, as per High Information Content Flat Panel Displays and Display Glass Thereof From Japan (July 16, 1991, 56 FR 32399), if the payment terms that the parent extends to its subsidiary, in combination with the time the merchandise remains in the subsidiary's inventory, indicates that the parent bears the cost of carrying the merchandise for a portion of time the merchandise is in inventory, then the parent's short-term interest rate will be used to calculate that portion of the inventory carrying cost. Accordingly, we have recalculated NSKC's U.S. inventory carrying cost using NSK's short-term interest rate for the time that NSK bears the cost of carrying the inventory. (See Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 65236, December 16, 1991)).

Comment 36: NSK argues that the second credit adjustment, "CREDIT 2", should be taken into consideration when making the U.S. credit adjustment. The first credit adjustment, "CREDIT 1", is the credit that applies to the original price of the sale and covers the full period from shipment date to payment date. When a PSPA is made, and the original price is either increased or decreased, NSK claims that the credit expense related to that sale is also either increased or decreased.

Timken argues that, while such an adjustment is not objectionable on principle, it is only acceptable as an adjustment to U.S. price if a similar adjustment is made in the home market. Timken contends that if a similar adjustment cannot be made in the home

market, then it should not be allowed as an adjustment to U.S. price.

Department's Position: We agree with Timken. When there are PSPAs in both markets, then the PSPA credit adjustment should also be applied to both markets. To apply it to one market and not to the other would be inequitable.

Comments Regarding Cost of Production Issues

Comment 37: Timken argues that Koyo's allocation of direct costs and indirect overhead based on number of units produced is incorrect. Koyo allocates direct costs and indirect overhead that accumulate at the production line to the individual models based on the number of units of that model produced on that particular production line. Timken alleges that this methodology would equalize direct costs regardless of differences in processing time.

Koyo responds that its March 25, 1991, supplemental cost response explains that the products produced at the subject plants are homogenous and that their cost accounting methodology was verified in this proceeding (in a previous administrative review) and the Department found their allocations to be reasonable.

Department's Position: We disagree with Timken. The response did not indicate that many different size bearings were produced on the same production line. Accordingly, Koyo's allocation methodology does not appear to distort the calculated cost of a bearing or bearing component.

Comment 38: Timken argues that Koyo's practice of applying plant-wide variances to all products is inadequate, as the plants in question produce both covered and non-covered products.

Koyo responds that, although the plants involved produce both covered and non-covered products, the machines and production processes are similar and the variances are allocated to individual TRB models based on their individual basic costs relative to the total basic cost of all models produced at the plant.

Department's Position: The Department has verified Koyo's cost accounting system in this and the over four inch proceeding. We have determined that Koyo's practice of calculating variances on a plant-wide basis by comparing the total plant-wide cost of production (COP) with the plant-wide basic costs does "not distort model-specific costs of production. Furthermore, Koyo demonstrated . . . that its cost system appropriately accounts for the different types of bearings" Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan (56 FR 41514, August 21, 1991).

Comment 39: Timken alleges that Koyo included all the interest income (both long and short-term) from all bank deposits as an offset to interest expense instead of limiting it to short-term interest income. Timken assets that the Department should reject the offset, as it is not related to operations.

Koyo rebuts by asserting that its response clearly states that it offset interest expense only by short-term income which resulted from short-term investments related to the production of TRBs.

Department's Position: We agree with Koyo. When calculating COP, the Department requires that interest income be related to the production of the merchandise subject to the finding in order to offset it against interest expense. We are satisfied that the interest income Koyo received on bank deposits and notes meets this requirement. (Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers from Colombia (55 FR 20495, May 17, 1990)).

Comment 40: Timken argues that, as NSK used a net, negative interest expense figure in COP, it credited COP on account of interest expense. Timken further argues that interest income must be directly tied to the production and sale of subject merchandise in order to qualify as an offset to interest expense. Further, Timken argues that if the Department does accept NSK's claim, interest expense should be set to zero.

NSK contends that for the Department to include non-operating interest expense in COP without equal consideration to non-operating interest income would be unfair. NSK additionally argues that to only include interest expense does not take into account NSK's non-operating interest income in relation to the production of merchandise subject to review.

Department's Position: In the COP calculation, interest expense may only be offset with short-term interest income. We have revised NSK's interest figure to only reflect short-term interest income as an offset. We are satisfied that the interest income NSK received on bank deposits and notes meets this requirement since these are within the normal operations of the firm (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan (56 FR 65238, December 16, 1991)).

Comment 41: Timken claims that Koyo's and NSK's COP figures should be revised to include the depreciation of idle assets, as it represents a COP even if it is not routinely reported as such. (Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany et al (54 FR 19076, May 3, 1989); Final Results of Antidumping Duty Administrative Review, Antifriction Bearings and Parts thereof from the Federal Republic of Germany, et al. (56 FR 31733, July 11, 1991)).

Koyo maintains that its treatment of idle equipment is in accordance with Japanese law. Koyo further states that, while it understands that the Department considers the depreciation of idle equipment to represent a COP for purposes of antidumping reviews, the depreciation expenses for adjustment are *de minimis*, and, therefore, no adjustment should be made in accordance with Final Results of Antidumping Duty Administrative Review, Antifriction Bearings and Parts thereof from the Federal Republic of Germany, et al. (56 FR 31733, July 11, 1991) and 19 CFR § 353.59.

NSK argues that the practice of not depreciating idle equipment is in accordance with Japanese generally accepted accounting principles (GAAP), which should be considered reasonable and similar to those in the U.S. and should therefore be accepted. NSK also contends that the expense should be considered *de minimis* and no adjustment should be made.

Department's Position: We agree with Timken that depreciation of idle equipment should be included in the COP calculation. However, we have found that, for Koyo, these costs are insignificant within the meaning of 19 CFR 353.59 and have accordingly made no adjustment. As we have no information regarding NSK's idle equipment, we have used Koyo's figures as BIA and, consequently, have made no adjustment.

Comment 42: Timken argues that, in calculating the depreciation for self-constructed assets, Koyo did not include general and administrative expenses and consequently understated depreciation.

Koyo responds that, under both U.S. and Japanese GAAP, the capitalization of self-constructed assets is based on the costs incurred to construct that asset. Koyo points out that general and administrative expenses are not a capitalized cost, but a period expense, and therefore it is not appropriate to

include these in the capitalized cost of self-constructed assets.

Department's Position: We agree with Koyo. GAAP does not require the capitalization of general and administrate expenses on self-constructed assets. Accordingly, we did not adjust Koyo's submitted depreciation expense.

Comment 43: Timken argues that an adjustment should be made to Koyo's and NSK's COP figures to account for the exclusion of non-operating expenses (which include write-downs and write-offs of inventory, disposal of fixed assets, and bonuses for directors and statutory auditors). Timken states that, while it may be that write-downs and write-offs of inventory are not included in COP according to Japanese GAAP, they are considered a COP by the Department and should be included as such.

Koyo responds that write-downs of inventory are included in its Selling, General and Administrative (SG&A) expenses and are therefore included in its COP. Koyo further points out that Timken's allegation is based on information from a prior period of review and that these expenses were reported for this period of review.

NSK responds that the accounting adjustment that occurs when writing down or writing off inventory has no bearing on the cost to produce the product and should not be included in the COP calculation. NSK further argues that, if the Department insists on including write-offs and write-downs of inventory in its COP calculations, all income or credits generated by those transactions should be incorporated as an offset to arrive at the actual cost incurred by NSK.

Department's Position: We agree with Timken that these expenses should be included in the COP calculation. We agree with NSK that all income or credits generated by those transactions should be used to offset the expense. We have calculated an adjustment for Koyo, taking into account inventory write-offs, loss on disposal of fixed assets, income from the sale of fixed assets, and bonuses for directors and statutory auditors, and have found that this amount is insignificant within the meaning of 19 CFR 353.59, so we have not adjusted COP. There is no information on the record indicating that these expenses have been excluded by NSK.

Comment 44: Koyo claims that home market selling expenses should be deducted from constructed value.

Department's Position: We agree that direct selling expenses should be deducted from constructed value. However, as Koyo combined its direct and indirect selling expenses into one variable, we have treated the selling expense as an indirect expense.

Comment 45: Timken argues that home market sales lacking COP information should not automatically go to constructed value analysis. Timken claims that the respondents could withhold COP data in order to have a model go to constructed value analysis. Timken suggests that home market sales lacking cost data should either use constructed value information as a COP proxy in the cost test or apply BIA for bearings with no cost data.

NSK responds that, as COP data were matched to home market sales on a quarterly basis, it is not unusual that COP data are lacking while constructed value data (provided on an annual basis) are not.

Department's Position: We agree with NSK and have used an average COP as BIA where no COP exists for the quarter in which the sale was made.

Comments Regarding Use of Best Information Available

Comment 46: Timken argues that the Department should not use the constructed value analysis for transactions that lack COP data. Timken asserts that NSK could simply withhold cost data on models that would produce high margins, and instead submit constructed value data for those transactions. As a result, Timken contends that constructed value could be used even though the home market sale was above the COP. Timken argues that the Department should either use constructed value as a proxy for COP or apply best information to calculate margins for those U.S. sales.

NSK argues that it submitted its COP data on a quarterly basis and, where a sale was not matched with the corresponding quarterly information, it was flagged as having no COP information. NSK claims that in such a situation the Department should use the cost information from the prior or following quarters as BIA.

Department's Position: We agree with NSK. Where COP and home market sales information did not match on a quarterly basis, we averaged the quarterly COP figures as BIA. Where COP information was still missing, we have used constructed value analysis, according to 19 U.S.C. 1677b(b)(2).

Comment 47: Timken argues that all U.S. models lacking difference in merchandise data should be assigned the BIA rate instead of using 20 percent of the home market difference in merchandise figure as BIA. The Department should not assume that U.S. models with no difference in merchandise information have a difference in merchandise figure within 20 percent of the home market model. NSK asserts that use of 20 percent of home market difference in merchandise as BIA is reasonable and in accordance with Department practice in this proceeding.

Department's Position: We agree with NSK and will continue to apply 20 percent of the home market cost data for the difference in merchandise between home market and U.S. similar models as BIA. (See Final Results of Antidumping Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 26057, June 6, 1991); Final Results of Antidumping Administrative Review, Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan (56 FR 65238, December 16, 1991)).

Comments Regarding Clerical Errors

Comment 48: NSK claims that its monthly average credit rate should have been used in the calculation of U.S. price.

Department's Position: We have used NSK's monthly average credit rate for the purpose of the final results.

Comment 49: Timken requests that the BIA rate for NSK be activated in the preliminary margin program. The asterisk preceding the line of programming has deactivated that line. NSK notes that the BIA rate would have been NSK's own rate, but the one that appears is a rate from a previous review.

Department's Position: We have adjusted the final program to include the correct BIA rate.

Comment 50: Timken claims that the Department incorrectly inflated Koyo's COP by applying the packing and research and development variable to the cost of manufacturing without realizing that these numbers were reported on a percentage basis. Timken also argues that the Department similarly failed to convert percentages to numeric values in the constructed value calculations.

Department's Position: We agree and have amended the program for the final results of review.

Comment 51: Timken argues that the Department failed to take account of

below-cost sales of models sold during less than three months of the period of review. In implementing the below cost test, Timken claims that a model sold in only two months during the period of review and sold below cost in those two months should not be subject to margin analysis.

Department's Position: We agree and have adjusted the cost test for the final results of review.

Comment 52: Timken and Koyo contend that the Department committed a clerical error in applying the set-splitting ratios to the newly-created transaction data for cups and cones. They note that, while the set-splitting ratios for cups were properly applied to the sets to create transaction data for cups, the set-splitting ratios for cones were mistakenly applied to the newly-created transaction data for the cups rather than to the transaction data for the sets. The result is that the transaction data for the cones are vastly understated.

Department's Position: We agree and have corrected this clerical error for the final results.

Comment 53: Koyo asserts that the variable for indirect selling expenses incurred in Japan for U.S. sales was incorrectly included in direct selling expenses.

Department's Position: We agree and have corrected this for the final results.

Comment 54: Koyo claims that the Department incorrectly added packing labor to the cost of manufacture (COM) in its calculation of constructed value.

Department's Position: We agree and have corrected this for the final results of review.

Comment 55: Koyo argues that the Department erroneously added 10 percent to the COP figures. Koyo claims that the statutory minimum of 10 percent of COM to be added as general and administrative expenses applies only to constructed value calculations.

Department's Position: We agree and have corrected this for the final results of review.

Final Results of Review

As a result of our comparison of U.S. price to foreign market value, we determine that the following margins exist for the period August 1, 1989, through July 31, 1990:

Manufacturer/exporter	Margin (percent)
Koyo Seiko Company Ltd.	16.35
Nippon Seiko, K.K.	4.92
Nachi-Fujikoshi Corporation	*18.07

* No shipments; margin from last review in which there were shipments.

The Department shall determine and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of TRBs from Japan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The Customs Service shall continue to require a cash deposit of estimated antidumping duties for all merchandise produced or exported by any of the companies covered by this review, based on the final rates for the above period; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews, or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, another review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the final results of the most recent review in which the manufacturer received the company-specific rate, or the rate for the manufacturer from the less-than-fair-value investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firms, will be 16.35 percent. This is the highest most current non-BIA rate for any firm in this proceeding.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 USC 1675(a)(1)) and 19 CFR 353.22.

Dated: January 31, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-3205 Filed 2-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-802]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore. We preliminarily determine the total bounty or grant to be 9.11 percent *ad valorem* for Sunstrand and zero for all other companies for the period January 1, 1990 through December 31, 1990. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 11, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 23271) of the countervailing duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore (54 FR 19125; May 3, 1989). On May 31, 1991, Torrington Company, the petitioner, and the Minebea Companies, the producers and exporters, requested an administrative review of the order. We initiated the review covering the period January 1, 1990 through December 31, 1990, on June 18, 1991 (56 FR 27944). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of antifriction bearings (other than tapered roller bearings) and parts thereof. Such merchandise is described in detail in appendix A to this notice. The Harmonized Tariff Schedule item numbers listed in appendix A are

provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990, and twelve programs. Three related companies responded to the Department's questionnaire: NMB Singapore Ltd. (NMB), Pelmec Industries (Pte) Ltd. (Pelmec), and Minebea Co., Ltd. Singapore Branch (MSB). Sundstrand Pacific (Pte.) Ltd. (Sunstrand), an exporter of the subject merchandise to the United States, did not respond to the questionnaire.

Analysis of Programs

(1) Production for Export under Part VI of the Economic Expansion Incentives Act (EEIA)

Under Part VI of the EEIA, 90 percent of a qualifying company's incremental export profit above a predetermined base figure is exempt from corporate income tax. The base figure is the average of the company's export profits for the three years preceding the application for participation in the program. The base figure and ten percent of any incremental export profit are taxed at the normal corporate tax rate. If there is no export profit above the export profit base, no exemption is permitted. The exemption cannot be carried forward or backward. An exporting company qualifies for the exemption if its export sales of a product (or products) are at least 100,000 Singapore Dollars and a minimum of 20 percent of the value of its total sales of the product.

None of the companies that responded to the questionnaire used this program during the review period. For Sunstrand, which did not respond to the questionnaire, we used best information available (BIA), in accordance with section 776(c) of the Act. As BIA, we used the highest rate determined in any previous administrative review of the order or in the final determination in the investigation. On this basis, we preliminarily determine the benefit from this program to be 9.03 percent *ad valorem* for Sundstrand and zero for all other companies for the period January 1, 1990 through December 31, 1990.

(2) Monetary Authority of Singapore (MAS) Rediscount Facility

The MAS rediscounting scheme is intended to provide Singapore exporters with access to short-term financing by discounting export and pre-export bills of exchange. Companies apply for this program through approved banks. The bank discounts the exporters' bills at a rediscount rate established by the MAS, plus a maximum spread of 1.5 percent. We have previously determined that this program is countervailable because it is available only to exporters and the interest rate is preferential. See Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore (54 FR 19127; May 3, 1989).

However, none of the companies that responded to the questionnaire response used this program during the review period. For Sundstrand, which did not respond to our questionnaire, we used, as BIA, the highest rate determined in any previous administrative review of the order or in the final determination in the investigation for this program. On this basis, we preliminarily determine the rate to be 0.08 percent *ad valorem* for Sundstrand and zero for all other companies during the review period.

(3) Other Programs

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not use any of these programs during the review period:

A. Tax Incentives under the EEIA—
- Part IV: Expansion of Established Enterprises
- Part VII: International Trade Incentives
- Part VIII: Foreign Loans for Productive Equipment
- Part XI: Warehousing and Servicing Incentives

B. Income Tax Act Incentives—
- Double Deduction of Export Promotion Expenses—Sections 14B and 14C
- Double Deduction for Research and Development—Section 14E
- Write-Offs of Payments for "Know-how", Patents and Manufacturing Licenses—Section 19B

C. Programs Administered by the Economic Development Board—
- Capital Assistance Scheme
- Productive Development Assistance Scheme
- Initiatives in New Technology Program

Preliminary Results of Review

Because zero or *de minimis* rates are considered significantly different from the country-wide rate, we did not weight average Sundstrand's rate with the other respondents' rates to calculate a country-wide rate. See 19 CFR section 355.22 (d) (1991).

As a result of our review, we preliminary determine the total bounty or grant to be 9.11 percent *ad valorem* for Sundstrand and zero for all other companies for the period January 1, 1990 through December 31, 1990.

The Department intends to instruct the Customs Service to assess countervailing duties of 9.11 percent of the f.o.b. invoice price on shipments from Sundstrand and zero on shipments from all other companies exported on or after January 1, 1990 and on or before December 31, 1990.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 9.11 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Sundstrand and zero from all other companies from Singapore entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 355.22.

Dated: February 4, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

Appendix A

Scope of The Review

The products covered by this review, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and

parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) Ball Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ balls as the rolling element. Such merchandise is classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(2) Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ spherical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(3) Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(4) Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ needle rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(5) Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof: These products include all spherical plain bearings which do no employ rolling elements and include spherical plain rod ends. Such merchandise is classifiable under the following HTS item numbers: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, and 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment importation.

[FR Doc. 92-3203 Filed 2-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-816]

Postponement of Preliminary Countervailing Duty Determination: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of certain softwood lumber products from Canada. The Department will now issue its preliminary determination no later than March 5, 1992.

EFFECTIVE DATE: February 11, 1992.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Barbara Tillman, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: On January 6, 1992, the Department of Commerce published its determination that the countervailing duty investigation on certain softwood lumber products from Canada was extraordinarily complicated in accordance with 19 CFR 355.15(b) and postponed the preliminary determination until February 24, 1992 (57 FR 397). In line with the reasoning set forth in that determination, the Department has determined that additional time is necessary to analyze the issues in this investigation and is postponing the preliminary determination until March 5, 1992. As a result of this postponement, the final determination will made on May 19, 1992.

This notice is published pursuant to 19 CFR § 355.15(e).

Dated: February 4, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-3206 Filed 2-10-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of a public hearing; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public hearing on the draft Shrimp Fishery Management Plan (Plan). The purpose of the hearing is to consider definitions of overfishing for pink, brown, royal red, and rock shrimp for inclusion in the plan. The Council will also reconsider the criteria for states' request for Federal closures for the white shrimp fishery following severe winter freezes. Following the hearing, the Council will decide if it will submit the plan to the Secretary of Commerce for final approval.

DATES: The hearing will begin at 3:30 p.m., local time, Wednesday, February 26, 1992.

ADDRESSES: The hearing will be held at the Hyatt Regency Savannah; Two W. Bay Street, Savannah, GA 31401-1189, (912) 238-1234.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407-4699; telephone (803) 571-4366.

Dated February 5, 1992.

David S. Crestin,

Acting Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-3174 Filed 2-10-92; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone (EEZ) under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). This notice specifically concerns applications from the People's Republic of China requesting authorization for certain vessels identified below to conduct transshipment activities in the following fishery management areas: (1) Bering Sea and Aleutian Islands (BSA), (2) Gulf of Alaska (GOA) and, (3) Pacific Groundfish Fishery off Washington, Oregon and California (WOC). Send comments on any aspect of these applications to: NOAA—National

Marine Fisheries Services, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910, and/or, for comments related only to BSA/GOA matters, to: Clarence G. Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, (907) 271–2809, and/or for comments related only to WOC matters, to: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 S.W. First Avenue, Portland, Oregon 97201, (503) 326–6352.

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301–713–2337).

Dated: February 5, 1992.

David S. Crestin,

Acting Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

The following Chinese factory ships (type "10"), cargo transports (type "11") and large stern trawlers (type "15") have applied for the activities indicated ("6" denotes transfers of U.S. processed product, "8" denotes transfers of fish harvested shoreward or seaward of the EEZ):

Permit Number	Vessel	Type	Fishery Mngt. Areas	Activities
CH–92–0001	GENG HAI	15	BSA GOA WOC	6 8
CH–92–0002	YAN YUAN 1	15	BSA GOA WOC	6 8
CH–92–0003	KAI CHUANG	15	BSA GOA WOC	6 8
CH–92–0006	YAN YUAN NO. 2	10	BSA GOA WOC	6 8
CH–92–0007	YUN HAI	10	BSA GOA WOC	6 8
CH–92–0008	HAI FENG 301	11	BSA GOA WOC	6 8
CH–92–0009	HAI FA	11	BSA GOA WOC	6 8
CH–92–0010	KAI TUO	15	BSA GOA WOC	6 8
CH–92–0011	YAN YUAN NO. 3	15	BSA GOA WOC	6 8
CH–92–0012	BAI LING HAI	15	BSA GOA WOC	6 8
CH–92–0013	MING ZHU	15	BSA GOA WOC	6 8
CH–92–0014	KAIFENG	15	BSA GOA WOC	6 8
CH–92–0015	KAIFA	15	BSA GOA WOC	6 8
CH–92–0016	TAIHE	15	BSA GOA WOC	6 8
CH–92–0017	FU XING HAI	15	BSA GOA WOC	6 8

[FR Doc. 92–3173 Filed 2–10–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Receipt of application for permit (P66G) and (P66I).

Notice is hereby given that the Alaska Department of Fish and Game, Division of Wildlife Conservation, has applied for permits to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

Application No. 1 (P66G): The applicant proposes to take 700 harbor seals (*Phoca vitulina*) and 600 spotted seals (*Phoca vitulina*) for scientific research. During the study, 100 harbor seals and 50 spotted seals will be captured, restrained, blood sampled, flipper tagged with number Allflex tags, equipped with satellite-linked platform transmitter terminals (PTTs) and/or VHF telemetry tags, and released; these same activities will be conducted on an additional 100 harbor seals and 50 spotted seals except that this group will not be electronically tagged; up to 10 harbor seals and 5 spotted seals are requested to be inadvertently harassed during the conduct of the proposed activities. These activities are proposed over a 4-year period in the Gulf of Alaska (Prince William Sound).

Application No. 2 (P66I): The applicant proposes to take up to 60 Steller sea lions (*Eumetopias jubatus*) over a 2-year period. Specifically, up to 50 animals will be chemically immobilized (while testing drugs), blood sampled, measured, weighed, an upper premolar extracted, swabbed, blubber biopsy taken, equipped with satellite-linked platform transmitter terminal (PTTs) and/or VHF radio tags and released (wherever possible, animals with failed PTTS will be recaptured and instruments removed); up to 10 additional animals may be unintentionally killed in the course of developing and testing effective chemical immobilization protocols; up to 50 dead premature-born sea lions will be collected for sampling; and up to 1000 sea lions will be disturbed in the course of the proposed activities.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

By Appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713–2289); and Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Bldg., 709 W. 9th Street, Juneau, Alaska 99802 (907/568–7221).

Dated: February 5, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–3148 Filed 2–10–92; 8:45 am]

BILLING CODE 3510–22–M

National Institute of Standards and Technology

[Docket Number 920112-2012; Notice 1]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1992 Fall Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Thirty-two reports are published in the 1992 Fall Meeting Technical Committee Reports and will be available on January 31, 1992. Comments received on or before April 10, 1992 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESS: The 1992 Fall Technical Committee Reports are available from NFPA, Publication Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Persons who comment may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before April 10, 1992, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by September 25, 1992, prior to the Fall Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each person who comments. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Fall Meeting, November 17–19, 1992 in Dallas, Texas by NFPA members.

Dated: February 5, 1992.

John W. Lyons,

Director.

1992 Fall Meeting—Technical Committee Reports

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

Doc. No.	Title	Action
NFPA 12	Carbon Dioxide Extinguishing Systems	C
NFPA 14	Installation of Standpipe & Hose Systems	C
NFPA 22	Water Tanks for Private Fire Protection	P
NFPA 36	Solvent Extraction Plants	P
NFPA 40E	Pyroxylin Plastic	P
NFPA 43B	Organic Peroxide Formulations	P
NFPA 55	Storage & Handling of Cylinder Gases	N
NFPA 80A	Buildings from Exterior Fire Exposures	P
NFPA 90A	Air Conditioning and Ventilating Systems	P
NFPA 90B	Warm Air Heating and Air Conditioning Systems	R
NFPA 99	Health Care Facilities	P
NFPA 99B	Hypobaric Facilities	P
NFPA 110	Emergency and Standby Power Systems	P
NFPA 110A	Stored Electrical Energy Emergency and Standby Power Systems	P
NFPA 256	Fire Tests of Roof Coverings	C
NFPA 259	Potential Heat of Building Materials	R
NFPA 306	Control of Gas Hazards on Vessels	P
NFPA 490	Ammonium Nitrate	P
NFPA 496	Purged and Pressurized Enclosures for Electrical Equipment	C
NFPA 501C	Recreational Vehicles	P
NFPA 501D	Recreational Vehicle Parks and Campgrounds	R
NFPA 702	Matrch Flame Field Test for Flame Resistant Textiles & Films	N
NFPA 802	Nuclear Research and Production Reactors	P
NFPA 803	Fire Protection for Light Water Nuclear Power Plants	P
NFPA 1033	Professional Qualifications for Fire Investigator	C
NFPA 1035	Professional Qualifications for Public Fire Educator	C
NFPA 1406	Outside Live Fire Training	N
NFPA 1452	Dwelling Firesafety Surveys	C
NFPA 1921	Fire Department Portable Pumping Units	C

1992 FALL MEETING—TECHNICAL COMMITTEE REPORTS—Continued

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

Doc. No.	Title	Action
NFPA 1962	Care, Use and Maintenance of Fire Hose, Including Connections and Nozzles	C
NFPA 1963	Screw Threads and Gaskets for Fire Hose Connections	P
NFPA 1964	Spray Nozzles (Shutoff and Tip)	C

[FR Doc. 92-3222 Filed 2-10-92; 8:45 am]

BILLING CODE 3510-13-M

[Docket Number 92013-2031; Notice 2]

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 910, Quincy, Massachusetts 02269-9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition by the NFPA Committee as the Technical Committee Report. Each person who has submitted a written proposal will receive a copy of the report.

Dated: February 5, 1992.

John W. Lyons,

Director.

NFPA No.	Title	Proposal closing date
NFPA 11-1988	Low Expansion Foam and Combined Agent Systems	1/24/92
NFPA 11A-1988	Medium and High-Expansion Foam Systems	1/24/92
NFPA 13-1991	Installation of Sprinkler Systems	7/17/92
NFPA 13D-1991	Installation of Sprinkler Systems in One-and Two-Family Dwellings and Mobile Homes	7/17/92
NFPA 13R-1991	Installation of Sprinkler Systems in Residential Occupancies Up to & Including Four Stories in Height	7/17/92
NFPA 20-1990	Installation of Centrifugal Fire Pumps	1/24/92
NFPA 30-1990	Flammable and Combustible Liquids Code	1/24/92
NFPA 30A-1990	Automotive and Marine Service Station Code	1/24/92
NFPA 30B-1990	Aerosol Products	1/24/92
NFPA 32-1990	Drycleaning Plants	7/15/92
NFPA 33-1989	Spray Application Using Flammable and Combustible Materials	7/15/92
NFPA 34-1989	Dipping and Coating Processes Using Flammable or Combustible Liquids	7/15/92
NFPA 37-1990	Stationary Combustion Engines & Gas Turbines	6/1/92
NFPA 40-1988	Cellulose Nitrate Motion Picture Film	7/17/92
NFPA 43C-1986	Gaseous Oxidizing Materials	3/1/92
NFPA 51B-1989	Cutting and Welding Processes	7/17/92
NFPA 53M-1990	Fire Hazards in Oxygen-Enriched Atmospheres	6/1/92
NFPA 71-1989	Signaling Systems for Central Station Service	1/24/92
NFPA 72-1990	Protective Signaling Systems	1/24/92
NFPA 72E-1990	Automatic Fire Detectors	1/24/92
NFPA 72G-1989	Notification Appliances for Protective Signaling Systems	1/24/92
NFPA 72H-1989	Local, Auxiliary, Remote Station, and Proprietary Protective Signaling Systems	1/24/92
NFPA 73-Proposed	Reinspection of Electrical Dwellings	7/17/92
NFPA 74-1989	Household Fire Warning Equipment	1/24/92
NFPA 77-1988	Static Electricity	1/18/92
NFPA 85H-1989	Combustion Hazards in Atmospheric Fluidized Bed Combustion System Boilers	1/24/92
NFPA 96-1991	Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment	7/17/92
NFPA 101-1991	Life Safety Code	4/15/92
NFPA 105-1989	Smoke Control Door Assemblies	1/24/92
NFPA 120-1988	Coal Preparations Plants	7/17/92

NFPA No.	Title	Proposal closing date
NFPA 124-1988	Diesel Fuel and Diesel Equipment in Underground Mines	7/17/92
NFPA 130-1990	Fixed Guideway Transit Systems	1/24/92
NFPA 170-1991	Firesafety Symbols	6/1/92
NFPA 241-1989	Safeguarding Construction, Alteration, and Demolition Operations	1/24/92
NFPA 257-1990	Fire Tests of Window Assemblies	1/24/92
NFPA 258-1989	Determining Smoke Generation of Solid Materials	1/24/92
NFPA 260-1989	Cigarette Ignition Resistance of Components of Upholstered Furniture	1/24/92
NFPA 261-1989	Mock-up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes	1/24/92
NFPA 321-1991	Classification of Flammable and Combustible Liquids	1/24/92
NFPA 327A-Proposed*	Safe Entry Into Tanks Containing Flammable or Combustible Liquids	1/24/92
NFPA 395-1988	Flamable and Combustible Liquids on Farms and Isolated Construction Projects	1/24/92
NFPA 474-Proposed*	Competencies for Hazardous Materials Specialists	1/24/92
NFPA 654-1988	Chemical, Dye, Pharmaceutical, and Plastics Industries	1/24/92
NFPA 655-1988	Sulfur Fires and Explosions	1/24/92
NFPA 664-1987	Wood Processing and Woodworking Facilities	1/24/92
NFPA 906M-1988	Fire Incident Field Notes	1/24/92
NFPA 907M-1988	Electrical Fire Causes	7/17/92
NFPA 912-1987	Fire Protection in Places of Worship	1/24/92
NFPA 913-1987	Protection of Historic Structures and Sites	1/24/92
NFPA 914-1989	Rehabilitation and Adaptive Reuse of Historic Structures	1/24/92
NFPA 1002-1988	Fire Apparatus Drive/Operator Professional Qualifications	1/24/92
NFPA 1003-1987	Airport Fire Fighter Professional Qualifications	1/24/92
NFPA 1122-1987	Code for Unmanned Rockets	7/17/92
NFPA 1123-1990	Outdoor Display of Fireworks	7/17/92
NFPA 1124-1988	Manufacture, Transportation, and Storage of Fireworks	7/17/92
NFPA 1127-Proposed*	High Power Rocketry	7/17/92
NFPA 1221-1991	Public Fire Service Communication Systems	1/24/92
NFPA 1231-1989	Water Supplies for Suburban & Rural Fire Fighting	1/24/92
NFPA 1410-1988	Initial Fire Attack	7/17/92

Proposed* Draft copies are available from the Standards Administration Department NFPA, 1 Batterymarch Park, Quincy, MA 02269-9101.

[FR Doc. 92-3223 Filed 2-10-92; 8:45 am]
BILLING CODE 3510-13-M

COMMODITY FUTURES TRADING COMMISSION

Extended Trading Hours Session at Financial Instrument Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is seeking comments on rule amendments submitted by the Financial Instrument Exchange, a Division of the New York Cotton Exchange ("FINEX" or "Exchange") pursuant to section 5a(12) of the Commodity Exchange Act ("Act") that would authorize an extended trading hours session at the Exchange. Specifically, the amendments would establish an additional session from 7 p.m. through 8:19 a.m. on each of the following calendar days (New York time), Sunday through Thursday, in the Dollar Index and European Currency Unit ("ECU") futures contracts and in options on both contracts. The Commission believes that publication of the proposal will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Act. Copies of the proposed rule amendments and accompanying correspondence are available from the Secretary of the Commission at the address and telephone number set forth below.

DATES: Comments must be received on or before February 26, 1992.

FOR FURTHER INFORMATION CONTACT: Lois J. Gregory, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION: FINEX has submitted rule amendments which would provide for an extended trading hours session from 7 p.m. to 8:19 a.m. on the following calendar day (New York time), Sunday through Thursday, in the Dollar Index and ECU futures contracts, in options on the Dollar Index contracts, and, after designation and approval by the Commission for trading, in options on ECU futures contracts, as well. Under the proposal, the extended trading hours session would be deemed to be the first part of the trading day—i.e., the extended session and the subsequent calendar day's regular session would be deemed to be parts of a single trading day. Highlights of the proposal are outlined below. Certain additional matters are addressed in correspondence between the Exchange and Commission staff that is available from the Office of the Secretariat.

Under the proposal, the extended session would start at 7 p.m., recess at 10 p.m., Eastern Standard Time, reopen ninety minutes later and trade through 8:19 a.m.[1] This trading break would correspond with a mid-day break in Japan during which no trading takes place pursuant to Tokyo Stock Exchange regulations. Original trading hours would then resume at 8:20 a.m. All trading from 8:20 through 8:21 a.m. would produce a "Reference Price". The Reference Price would be determined in the same manner and serve the same function as an opening and would also produce an average price for purposes of average price orders.

Under the proposal, a contract's settlement price would continue to be established at the end of an entire trading day. Daily price limits on the futures contracts would continue to be calculated on the basis of the settlement price and would apply to the entire following trading day. Volume and open interest would continue to be calculated once for each trading day.

FINEX intends to publish one high and low report per trading day; however, highs and lows for segments of the trading day would be noted by and available upon request to Exchange staff. The Exchange intends to continue to timely supply the Commission reports required by Commission regulations concerning volume, open interest, and prices, as well as various trader transactions and positions. Further, the

[1] The extended session would start at 8 p.m. and the recess would begin at 11 p.m. on the first trading day after institution of Day Light Savings Time in New York.

Exchange does not expect to make any modifications to current procedures for delivery, or option exercise and assignment, and anticipates that net capital and segregation requirements would continue to be computed at the end of each trading day.

Original margin requirements would be based on a net calculation of positions established during a trading day and would be due at 10 a.m. on the next trading day. Intra-day margin which would be processed between 12 noon and 3 p.m. as well as additional original margin which would be due at 11 a.m. would be based on a net calculation of positions created during the previous trading day coupled with those created during the subsequent extended trading hours session.

Any person interested in submitting written data, views, or arguments on the proposed rule should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date. Issued in Washington, DC, on February 5, 1992.

John C. Lawton,

Associate Director.

[FR Doc. 92-3141 Filed 2-10-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995-2020 (Support Panel) will meet on 25-26 February 1992, at HQ AFLC, Wright-Patterson AFB, OH, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-3158 Filed 2-10-92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.197E]

College Library Technology and Cooperation Grants Program—Biotechnology Education Information Demonstration Project; Notice Inviting Applications for a New Award for Fiscal Year (FY) 1992

Purpose of Program: The College Library Technology and Cooperation Grants Program provides grants for technological equipment and other special purposes designed to encourage the use of technology to enhance library resource sharing. The competition announced in this notice is for a biotechnology information education demonstration project under the College Library Technology and Cooperation Grants Program authority.

Eligible Applicants: Institutions of higher education.

Deadline for Transmittal of Applications: April 28, 1992.

Deadline for Intergovernmental Review: June 29, 1992.

Applications Available: February 28, 1992.

Available Funds: $2.5 million.

Size of Award: $2.5 million.

Number of Awards: One.

Project Period: Up to 36 months.

Budget Period: Under 34 CFR 779.8 grant funds for this project may be expended over a three-year period.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86; and (b) the regulations for this program in 34 CFR part 779, but only those provisions which apply to Research and Demonstration grants as described in 34 CFR 779.2(d).

Supplementary Information: One category of grants under the College Library Technology and Cooperation Grants Program is for research and demonstration projects to meet specialized national or regional needs in using that technology. Public Law 102-107, enacted November 26, 1991, provides FY 1992 appropriations for federally assisted library programs. That legislation specifies that, of the total funds appropriated for federally assisted library programs, $2,500,000 shall be for a biotechnology information education demonstration project. Note that the competition announced in this notice is limited to applications for this project and is separate from the FY 1992 competition previously announced for the College Library Technology and Cooperation Grants Program in the **Federal Register** on June 12, 1991 (56 FR 27156). This notice does not affect the competitions announced in the June 12, 1991 notice.

Selection Criteria: Applications will be evaluated under the general selection criteria stated in the regulations for this program at 34 CFR 779.21(a) (60 points); and under the special program criteria for Research and Demonstration grants stated in the regulations for this program at 34 CFR 779.21(b)(9) (40 points), for a total of 100 points.

For Application or Information Contact: Dr. Neal K. Kaske, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404B, Washington, DC 20208-5571. Telephone: (202) 219-1871. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1047.

Dated: February 6, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92-3219 Filed 2-10-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following notice of meetings is provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, February 18, 1992, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, and continuing on Wednesday, February 19, 1992, beginning at 9:30 a.m. on both days. The purpose of this meeting is to permit representatives of U.S. company members of the IAB to participate in a meeting of the IEA's Standing Group on Emergency Questions (SEQ), scheduled to be held at the OECD on that date. The agenda for the meeting, which is under the control of the IEA Secretariat, is as follows:

1. Adoption of the Agenda.
2. Summary Record of the 73d Meeting.
3. The Gulf Crisis of 1990/91, the IEA Response and Lessons for IEA Emergency Preparedness.
4. SEQ Programme of Work for 1992.
5. IAB Activities.

6. Emergency Response Situation of IEA Countries.
—The Emergency Response Potential of Finland.
—Emergency Response Reviews of IEA Countries.
—Spain
—Norway
—Belgium
—Sweden
Schedule for the Review of Member Countries' Emergency Response Programmes
7. Preparations for AST–7.
8. International Oil/Supply Demand Situation.
—Current Oil Market Situation
9. IEA Emergency Response Potential.
—Aviation Fuel Demand Developments
—Tanker Regulations and Markets
10. Emergency Reserve and Net Import Situation of IEA Countries on 1st July and 1st October 1991.
11. Emergency Data System and Related Questions.
—Quarterly Oil Forecast 1Q92/4Q92
—Monthly Oil Statistics to November 1991
—Base Period Final Consumption 4Q90/3Q91
—Emergency Data Systems Working Group—Progress Report
12. Any Other Business
—IEA Membership of France
—Next Meeting

II. A meeting of the IAB will be held on Wednesday, February 19, at the OECD, beginning at 2:30 p.m., and continuing on Thursday, February 20, 1992, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the joint government/industry Design Group which has been established by the SEQ for the preparation of the IEA's Seventh Allocation Systems Test (AST–7).

The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Record of the last meeting.
2. AST–7 Outline by the Chairman/Secretariat and submissions received from Group members.
3. Objectives and organization of AST–7.
4. Next Meeting.

As permitted by 10 CFR 209.32, the usual 7-day period for publication of the notice of these meetings in the **Federal Register** has been shortened because unanticipated circumstances pertaining to the IEA's scheduling of these meetings delayed the issuance of this notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings are open only to representatives of members of the IAB and their counsel, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, February 5, 1992.

John J. Easton, Jr.,
General Counsel.

[FR Doc. 92–3210 Filed 2–10–92; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Revised Print Software for the FERC Form No. 2–A

February 4, 1992.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Availability of Revised Print Software for the FERC Form No. 2–A.

SUMMARY: Revised PC and mainframe versions of the software for printing the structured data file of the FERC Form No. 2–A (Annual Report of Non major Natural Gas Companies) are now available. This software has been developed for Commission use and to assist pipelines in complying with the electronic submission requirement for filing the FERC Form No. 2–A in accordance with Order Nos. 493 (53 FR 15025 (Apr. 27, 1988)), 493–A (53 FR 30027 (Aug. 10, 1988)), and 493–B (53 FR 49652 (Dec. 9, 1988)). The revised software includes corrections to the previous print program as well as many cosmetic enhancements (textual and numeric) to the output pages. In addition, a new user-friendly menu screen has been incorporated into the PC version. The User/Operations Manual, applicable to the FERC Form Nos. 2, 2–A and 16 print software, has been updated and is also available. An order form is attached for requesting the COBOL source code, PC executable code, and the User/Operations Manual.

DATES: The revised source code, PC executable software and User/Operations Manual are available on February 4, 1992.

ADDRESSES: Requests for the software and the documentation should be directed to: Reference and Information Center, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., room 3308, Washington, DC 20426, (202) 208–1371.

FOR FURTHER INFORMATION CONTACT: Craig Hill, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 6000, Washington, DC 20426, (202) 208–2026.

SUPPLEMENTARY INFORMATION: Revised PC and mainframe software (executable files and source code) are now available to provide for the printing of the structured electronic data file for the FERC Form No. 2–A when submitted in accordance with the revised instructions and record formats issued on March 1, 1991. The print software was written in COBOL and one version is applicable to both the PC and mainframe environments (minor changes to the FILE-CONTROL statements are required). The executable files (*.EXE) can be run on an IBM or compatible PC with DOS 3.0 or later version and 640K of RAM. An updated User/Operations Manual for the Form No. 2–A (also applicable to the FERC Form Nos. 2 and 16) is available in hardcopy and on diskette in WordPerfect 5.1 and ASCII formats. The complete software and documentation files are available in two 'packages' on either 3.5" (1.44MB) or 5.25" (1.2MB) double-sided, high density diskettes. Package A contains the executable code required for PC environment execution and Package B contains the source code which is required for mainframe execution. A directory of files found on each diskette is listed in Appendix A.

The revised software is available from the Commission's copy contractor, LaDorn Energy Information Services ((202) 898–1151 or (800) 676–FERC), located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426. Persons requesting the software may fill out the attached Order Form. The software is available without charge. However, the commission's copy contractor has a copy fee of $7.00 per diskette. The User/Operations Manual is also available in hardcopy format at 30 cents per page.

The software has been tested by staff. However, if problems occur relating to the software, the Commission staff recommends users to submit written comments as to the exact nature of the problem to Craig Hill, room 6000, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a

modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1397. For access at 9600 baud, dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208–2474. This notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (Room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

Appendix A

Directory of Files for Each Diskette

Note: A detailed crosswalk between the program names, record formats, Report Title and Form No. 2–A page numbers is provided in Appendix D of the *User/Operations Manual.*

Package A—Diskette #1

FORM2A	EXE	Executable code—PC Driver program.
FM2A0	EXE	Executable code—Cover page, Parts I–II.
FM2A1	EXE	Executable code—Part III–VI.
FM2A2	EXE	Executable code—Parts VII–XX.
FM2F4B	EXE	Executable code—Substitute Parts III–V.
FM2F5B	EXE	Executable code—Substitute Part VIII.
FM2F5D	EXE	Executable code—Substitute Part Part X.
FM2F6A	EXE	Executable code—Substitute Part Part XIII.
FM2F6C	EXE	Executable code—Substitute Part XV.
FM2F6E	EXE	Executable code—Substitute Part XIV.
FM2F6G	EXE	Executable code—Substitute Part XVI.
FM2F7D	EXE	Executable code—Substitute Part XVII.

12 files

Package A—Diskette #2

FUG2A	W51	User/Operations Manual in WordPerfect 5.1.
FUG2A	ASC	User/Operations Manual in ASCII.
NOTICE2A	W51	Notice in WordPerfect 5.1.
NOTICE2A	ASC	Notice in ASCII.

4 files

Package B—Diskette #1

FORM2A	COB	Source code—Mainframe driver.
FM2A0	COB	Source code—Cover page, Parts I–II.
FM2A1	COB	Source code—Parts III–VI.
FM2A2	COB	Source code—Parts VII–XX.
FM2F4B	COB	Source code—Substitute Parts III–V..
FM2F5B	COB	Source code—Substitute Part VIII.
FM2F5D	COB	Source code—Substitute Part X.
FM2F6A	COB	Source code—Substitute Part XIII.
FM2F6C	COB	Source code—Substitute Part XV.
FM2F6E	COB	Source code—Substitute Part XIV.
FM2F6G	COB	Source code—Substitute Part XVI.
FM2F7D	COB	Source code—Substitute Part XVII.

12 files

Package B—Diskette #2

F2A1PD		Source code–copy member.
F2A2PD		Source code–copy member.
F2F4BPD		Source code–copy member.
F2F4BTB		Source code–copy member.
F2F5BPD		Source code–copy member.
F2F5BTB		Source code–copy member.
F2F5DPD		Source code–copy member.
F2F6APB		Source code–copy member.
F2F6ATB		Source code–copy member.
F2F6CPD		Source code–copy member.
F2HDRPD		Source code–copy member.
FIPSPROC		Source code–copy member.
FIPSTBL		Source code–copy member.
FM2ED10		Source code–copy member.
FM2ED10B		Source code–copy member.
FM2ED12		Source code–copy member.
FM2ED5		Source code–copy member.
FM2ED7		Source code–copy member.
FM2EDWS		Source code–copy member.
FM2EOP		Source code–copy member.
FOOTPD		Source code–copy member.
FOOTWS		Source code–copy member.
PARSERP		Source code–copy member.
PARSERWS		Source code–copy member.
STCODE	CPY	Source code–copy member.
STDMOVES		Source code–copy member.
FORM2A	CBL	Source code–PC Driver(optional).
F2ADRIV	JCL	Compile JCL file for Driver.
F2ACOMP	JCL	Compile JCL file for all other programs.
F2ARUN	JCL	Run JCL file for Form No. 2–A.

31 files

Package B—Diskette #3

FUG2A	W51	User/Operations Manual in WordPerfect 5.1.
FUG2A	ASC	User/Operations Manual in ASCII.
NOTICE2A	W51	Notice in WordPerfect 5.1.
NOTICE2A	ASC	Notice in ASCII.

4 files

[FR Doc. 92–3142 Filed 2–10–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SP92–9–000]

Pre-Granted Special Permission for Oil Pipelines; Order Pre-Granting Special Permission for Certain Oil Pipeline Tariff Filings

Issued February 4, 1992.

Current oil pipeline regulations require oil pipelines to seek "special permission" to file a tariff to be effective on less than 30 days' notice. For the reasons discussed below, the Commission waives its regulations and pre-grants special permission to permit oil pipeline tariff filings to be made on less than 30 days' notice where the tariff revisions do not change a pipeline's rates or other substantive elements of the tariff and are made to revise a filing currently pending before the Commission.

Background

Section 6(3) of the Interstate Commerce Act (ICA) [1] requires oil pipelines to file their tariffs with a minimum of 30 days' notice. The ICA, however, provides for modification of the 30-day requirement in certain circumstances:

[T]he Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or

[1] 49 App. U.S.C. 6(3) (1991).

modify the requirements of this section in respect to publishing posting, and filing of tariffs, either in particular instances or by a general order applicable to special or particular circumstances or conditions * * *.[2]

Thus, the Commission has authority under this section to grant waiver of the 30-day notice period by a general order.[3]

Section 341.58 of the Commission's regulations [4] provides that the Commission will exercise its authority to waive the 30-day notice period only in cases where actual emergency and real merit are shown. The regulation further provides that clerical and typographical errors constitute good cause, and requires the pipeline to file an application for special permission specifying the omissions or mistakes. Currently, these special permission applications are handled on a case-by-case basis.

Discussion

In order to reduce the administrative burden on the oil pipelines and the Commission, the Commission waives its regulations and pre-grants special permission to permit oil pipeline tariff filings on less than 30 days' notice where the tariff revisions are made to tariff filings that are pending before the Commission and do not affect the pipeline's rates or services. The types of changes to pending tariffs that would be permitted under this blanket special permission are typographical corrections, spelling corrections, date corrections, and other similar types of non-rate, non-service connected changes.

When filing under this special permission, the pipeline must include a cover letter that sets forth the basis for requesting a short notice period. The filing must also be made a minimum of three working days before its proposed effective date. If the filing meets the criteria under this blanket special permission for short notice filings, the tariff item will become effective as proposed. No Commission letter or order will be issued. If the filing is protested or must be suspended and consolidated with an ongoing proceeding, an order will be issued, but the short notice issue would still be automatic if the blanket permission criteria are met.

This special permission is granted for a five-year period from its date of issuance, or until the Commission adopts new oil pipeline procedural regulations that address this matter, whichever comes first.

The filing fee set forth in § 346.1(d)(5) of the Commission's regulations [5] is waived for filings made under this blanket special permission.

The Commission Orders: Special permission is pre-granted to permit oil pipelines to file tariff changes on less than 30 days notice consistent with the conditions set forth in this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-3143 Filed 2-10-92; 8:45 am]

BILLING CODE 6717-01-M

[2] *Id.*

[3] The Commission granted a similar blanket special permission in Association of Oil Pipelines, 50 FERC ¶ 61,415 (1990) (granting blanket special permission to allow oil pipelines to cancel tariffs under suspension).

[4] 18 CFR 341.58.

[5] 18 CFR 346.1(d)(5).

[Docket No. CP88-312-011]

Natural Gas Pipeline Co., of America; Sale of Natural Gas

February 4, 1992.

Take notice that on January 30, 1992, Natural Gas Pipeline Company of America (Natural), 701 East Lombard Street, Lombard, Illinois, 60148-5072, submitted the following information regarding the sale of natural gas to be made to an affiliate under Natural's Rate Schedule IS-1, pursuant to the authorization granted by order in Docket No. CP88-312-000, and CP88-312-002, issued December 20, 1988, and June 7, 1989, respectively (45 FERC ¶ 61,465 and 47 FERC ¶ 61,334).

(1) *Name of Buyer:* OXY USA Inc. (OXY USA).

(2) *Location of Buyer:* Tulsa, Oklahoma.

(3) *Affiliation between Natural and Buyer:* Natural is a subsidiary of MidCon Corp (MidCon). Both MidCon and OXY USA are subsidiaries of Occidental Petroleum Corporation.

(4) *Term of Sale:* March 1, 1992, through April 1, 1992, and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities:*
Daily Quantity: 250,000 MMBtu.
Estimated Total: 5,475,000 MMBtu.

(6) Maximum sales rate: $2.21 per MMBtu.
Minimum sales rate: $1.60 per MMBtu
Rate to be charged during billing period: $1.60 per MMBtu

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Reulatory Commission, Washingon, DC 20426, within 30 days after issuance of this notice by the Commission, pursuant to the orders of December 20, 1988, and June 7, 1989. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Natural may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 92-3144 Filed 2-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-312-012]

Natural Gas Pipeline Co. of America; Sale of Natural Gas

February 4, 1992.

Take notice that on January 30, 1992, Natural Gas Pipeline Company of America (Natural), 701 East Lombard Street, Lombard, Illinois, 60148-5072, submitted the following information regarding the sale of natural gas to be made to an affiliate under Natural's Rate Schedule IS-1, pursuant to the authorization granted by order in Docket Nos. CP88-312-000 and CP88-312-002, issued December 20, 1988, and June 7, 1989, respectively (45 FERC ¶ 61,465 and 47 FERC ¶ 61,334).

(1) *Name of Buyer:* Trident NGL, Inc. (Trident).

(2) *Location of Buyer:* The Woodlands, Texas.

(3) *Affiliation between Natural and Buyer:* Natural is a subsidiary of MidCon Corp (MidCon). Both MidCon and OXY USA Inc. are subsidiaries of Occidental Petroleum Corporation. OXY USA Inc. owns a fifty percent interest in Trident.

(4) *Term of Sale:* March 1, 1992, through April 1, 1992, and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities:*
Daily Quantity: 250,000 MMBtu
Estimated Total: 7,300,000 MMBtu

(6) Maximum sales rate: $2.21 per MMBtu
Minimum sales rate: $1.60 per MMBtu
Rate to be charged during billing period: $1.60 per MMBtu

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of this notice by the Commission, pursuant to the orders of December 20, 1988, and June 7, 1989. If no protest is filed within that time or the

Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Natural may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 92-3145 Filed 2-10-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-81-000, RP88-221-000, RP90-119-001, RP91-4-000, and RP91-119-000 (Phase I/Rates)]

Texas Eastern Transmission Corp.; Informal Settlement Conference

February 4, 1992.

Take notice that a conference of the Steering Committee is scheduled to be convened in this proceeding on February 27, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. Parties may designate anyone they wish for the Steering Committee, but business representatives are encouraged. Participants on the Steering Committee should include individuals who are in a position to commit their parties quickly on matters of substance.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin at (202) 208-0042 or Arnold H. Meltz at (202) 208-0737.

Lois D. Cashell,

Secretary.

[FR Doc. 92-3146 Filed 2-10-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 92-9: Experimental Program to Stimulate Competitive Research

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (ER) of the Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's human resource infrastructure through the support of science, engineering and mathematics education at all levels of education, announces its interest in receiving special research grant applications for the support of training grants. A total of $5.0 million will be available for grant awards under the DOE/EPSCoR program in FY 1992 for graduate traineeships in energy-related science and engineering disciplines. The purpose of the DOE/EPSCoR program is to enhance the capabilities of the designated States to develop science and engineering manpower in energy-related areas and to conduct nationally competitive energy-related research.

DATES: Applications for grants under this notice should be received by 4:30 p.m. Eastern local time March 31, 1992.

ADDRESSES: Application kits and guides are available from the Office of University and Science Education Programs, ER-80, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-8949. The completed applications must be submitted to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64, Washington, DC 20585. Telephone requests may be made by calling (202) 586-8949. The personal or courier delivery address is: U.S. Department of energy, Division of Acquisition and Assistance Management, ER-64, Office of Energy Research, 19901 Germantown Road, Germantown, MD 20874. Each application submitted must reference Notice No. 92-9. Telephone and telefax numbers must also be included in any application.

FOR FURTHER INFORMATION CONTACT: Mrs. Donna J. Prokop, Education Programs Manager, Office of University and Science Education Programs, Office of Energy Research, ER-82, Department of Energy, Washington, DC 20585. (202) 586-8949.

SUPPLEMENTARY INFORMATION: The Conference Committee for the fiscal Year 1991 Energy Water and Development Appropriations Bill recommended that DOE provide a total of 2 million dollars for graduate traineeships and 2 million dollars for planning grants to those states organizations involved in the Experimental Program to Stimulate Competitive Research (EPSCoR). The Department's response to this recommendation was the Department of Energy's Experimental Program to Stimulate Competitive Research (DOE/EPSCoR). In accordance with 10 CFR 600.7(b)(1), and due to the Congressionally directed limitations, it was determined that eligibility for these grants would be restricted to the DOE-designated planning committees for the following states and territory: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming and the Commonwealth of Puerto Rico. The purpose for restricting eligibility in this program, to these States, is to enhance their capabilities and to develop science and engineering manpower in energy-related areas.

DOE published a notice inviting grant applications for the DOE/EPSCoR program from the eligible state planning committees, notice 91-6, in the **Federal Register** at 56 FR 2516, January 23, 1991. On March 8, 1991, DOE amended the January 23, 1991, notice (at 56 FR 9945) to clarify areas of the application and the review process and to provide further information on EPSCoR objectives and further funding opportunities.

A total of 18 planning grant applications and 18 training grant applications was received at DOE by March 20, 1991, all of which were peer reviewed. On August 22, 1991, Secretary of Energy James D. Watkins announced the awards for the DOE/EPSCoR program. Eighteen applications for planning grant funds were approved for funding under the program, and a total of eight states was competitively awarded funds for DOE/EPSCoR traineeship grants for a period of one year: Alabama, Arkansas, Kentucky, Mississippi, Oklahoma, South Carolina West Virginia, and Wyoming.

The EPSCoR planning committees within the eligible states are again encouraged to apply for special research grants that will support the training efforts. Training grant applications must detail the need for energy-related graduate traineeships in energy-related scientific and technical educational disciplines.

Traineeship Suppon

Traineeship grant applications must not exceed $250,000 per year (Maximum $500,000) for a duration of two years. The amount available per year per student under this grant award is anticipated to be $25,000.

The primary objectives for the traineeship appointments are to: (1) Increase the number and quality of EPSCoR state U.S. graduates with advanced training in energy-related disciplines; (2) provide masters- and doctoral-level training and research experience through active participation in established, ongoing programs of energy research at selected universities; and (3) ensure that the trainees obtain a broader understanding of the development and application of energy-

related research and technologies through close involvement with researchers and research programs in energy industries and/or the Department's major multiprogram laboratories. The traineeship appointments may be offered only to students who are U.S. citizens or permanent resident aliens who have been admitted to full graduate standing in an energy-related field. Applicants are required to supplement each traineeship in conjunction with other energy-related research, practicum experience and education activities which will contribute to the trainee(s) academic progress.

The application to the DOE/EPSCoR program shall include a narrative description which addresses the points listed below: (1) Identify academic institutions, departments and disciplines to be included in the traineeship program. Summarize the qualifications of the institution, including current energy research activities and available facilities. Discuss the potential of the proposed traineeship program to enhance the State's energy-related science and engineering manpower capabilities and to attract additional high quality trainees to energy-related research. (2) Identify and describe the energy-related research program(s) on which the traineeship request is based, including the number of degrees awarded to graduate students associated with the identified energy research area(s), a summary of accomplishments, and the record of master's and/or doctoral degree productivity of participating departments over the past five years, by year. (3) Describe plans for recruiting high quality trainee candidates (include the selection criteria to be used) and strategies for insuring meaningful trainee interaction with the DOE multiprogram or energy-related industrial laboratories. Provide examples of the proposed trainee-industry/laboratory interaction arrangements, and include names and brief backgrounds of the groups involved in developing the program. (4) List the qualifications of key faculty committed to the traineeship program as measured by such elements as research projects, publications, number and type of masters and/or doctoral dissertations supervised over the last five years. (5) List the support received for energy research projects from non-campus sources. (6) Provide a detailed budget, outlining the total amount requested, the amount requested per trainee; i.e., stipend, tuition and fees, and plans, if any, for augmenting or supplementing trainee costs from other non-Federal sources.

The eight state committees that received traineeship grant awards under the FY 1991 DOE EPSCoR program must submit a competitive renewal application to be eligible for continued support. The competitive renewal applications must include a separately bound Progress Performance Report summarizing the activities to date under the DOE/EPSCoR traineeship grant, including, but not limited to, the following information:

(a) A summary of overall progress of the traineeship awards to date, including, if applicable: recruiting methods/efforts utilized by the institutions involved; the number of applicants that responded; the method(s) by which the trainees were selected; the number of trainees selected; the trainees research topic area(s)/thesis project; practicum arrangements and dates, if applicable; and any other information relevant to the general goals of the DOE/EPSCoR traineeship grant award.

(b) An indication of any current problems or favorable or unusual developments;

(c) A summary of the effort to be performed during the succeeding funding period; and

(d) Other information pertinent to the current traineeship grant being supported.

The average cost of each traineeship is anticipated to be $25,000, which shall cover all expenses. Indirect costs may not be requested for the traineeship portion of the application of the DOE/EPSCoR program. Although no formal cost sharing is required for the DOE/EPSCoR traineeship program, information about outside funding sources, particularly non-Federal funds, should be provided and may be considered in selecting which of the most meritorious applications should be supported. DOE/EPSCoR traineeship funds may not be used for equipment.

DOE expects to make about ten grants in FY 1992 to meet the objectives of this program. However, DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted. Additional information may be subsequently requested by DOE during evaluation of a submitted application.

General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide. This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by 10 CFR part 605 should not exceed 30 double-spaced, typed pages, excluding curriculum vitae.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

D. D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92-3116 Filed 2-10-92; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 92-58]

Notice of Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the FHLBank System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Finance Board promulgated Community Support regulations (12 CFR part 936) that were published in the Federal Register on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for this first review under the new regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: Due Date For Member Community Support Statements for Members Selected in First Quarter Review: March 31, 1992.

Due Date For Public Comments on Members Selected in First Quarter Review: March 31, 1992.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408-2825, or Kathleen S. Brueger, Associate Director,

Housing Finance Directorate, (202) 408–2821, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. Only members with post-July 1, 1990 CRA Evaluations and members not subject to CRA will be selected for review in the first two years following the effective date of the regulation. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members to be Reviewed in First Quarter 1992, Grouped by FHLBank District.

Federal Home Loan Bank of Boston—District 1, Post Office Box 9106, Boston, Massachusetts 02205–9106.

Member	City	State
Bank of Darien	Darien	CT
First FS & LA of E. Hartford.	East Hartford	CT
Enfield FS&LA	Enfield	CT
Northeast Savings, F.A.	Hartford	CT
The Bank of New Haven.	New Haven	CT
Cargill Bank of Connecticut.	Putnam	CT
Sentry S&LA	Stamford	CT
First FS&LA of Waterbury.	Waterbury	CT
Heritage Bank	Watertown	CT
Boston Private Bank & Trust Co..	Boston	MA
First FSB of Boston	Boston	MA
First Trade Savings Bank, FSB.	Boston	MA
Union FS&LA of Boston.	Boston	MA
Greater Boston Bank, A Co-op Bank.	Brighton	MA
Foxboro FS&LA	Foxboro	MA
Georgetown Savings Bank.	Georgetown	MA
Hyde Park Co-op	Hyde Park	MA
Scituate Federal Savings Bank.	Scituate	MA
Middlesex Federal Savings, FA.	Somerville	MA
The Federal Savings Bank.	Waltham	MA
New England Federal Savings Bank.	Wellesley	MA
Auburn S&LA	Auburn	ME
Augusta Federal Savings Bank.	Augusta	ME
First FS&LA of Bath	Bath	ME
Brunswick Federal Savings, FA.	Brunswick	ME
Camden National Bank.	Camden	ME
Aroostook County FS&LA.	Caribou	ME
First Federal Savings Bank.	Lewiston	ME
Kennebec FS&LA of Waterville.	Waterville	ME
Watterville S&LA	Waterville	ME
Federal Savings Bank.	Dover	NH
NFS Savings Bank	Nashua	NH
Plaistow Co-operative Bank.	Plaistow	NH
Salem Co-op Bank	Salem	NH
Old Stone Bank, FSB	Providence	RI
First Vermont Bank & Trust Co..	Brattleboro	VT
Vermont National Bank.	Brattleboro	VT
The Merchants Bank	Burlington	VT
Lyndonville Savings Bank & Trust Co..	Lyndonville	VT
Franklin-Lamoille Bank.	St. Albans	VT
Vermont Federal Bank, FSB.	Williston	VT

Federal Home Loan Bank of New York—District 2, One World Trade Center, 103rd Floor, New York, New York 10048.

Member	City	State
Axia Federal Savings Bank.	Avenel	NJ
Young Men's S&LA	Bridgeton	NJ
Inter-Boro S&LA	Cherry Hill	NJ
Central Jersey Savings Bank, SLA.	East Brunswick	NJ
Crestmont FS&LA	Edison Township	NJ
GSL Savings Bank, SLA.	Guttenberg	NJ
Kearny FS & LA	Kearny	NJ
Carteret Savings Bank.	Morristown	NJ
Dollar Savings Bank, SLA.	Newark	NJ
Penn Federal Savings Bank.	Newark	NJ
First Savings Bank, SLA.	Perth Amboy	NJ
Lakeland Savings Bank, FSB.	Succasunna	NJ
Union City S&LA	Union City	NJ
South Bergen S&LA	Wood Ridge	NJ
Albany Savings Bank, S&LA.	Albany	NY
Amsterdam Federal, SLA.	Amsterdam	NY
Bayside Federal Savings Bank.	Bayside	NY
Bay Ridge Federal, S&LA.	Brooklyn	NY
Brooklyn Federal Savings Bank.	Brooklyn	NY
Canisteo S&LA	Canisteo	NY
Elmira S&LA	Elmira	NY
Gloversville Federal, S&LA.	Gloversville	NY
Abacus Federal Savings Bank.	New York	NY
The Dime Savings Bank of NY, FSB.	New York	NY
First FS&LA of Peekskill.	Peekskill	NY
Home Federal Savings Bank.	Ridgewood	NY
Westerleigh Savings FS&LA.	Staten Island	NY
The Long Island Savings Bank, FSB.	Syosset	NY

Federal Home Loan Bank of Pittsburgh—District 3, 625West Ridge Pike, Suite B-107, Conshohocken, Pennsylvania 19428.

Member	City	State
Laurel Savings Asso.	Allison Park	PA
Altoona FS&LA	Altoona	PA
Peoples Home Savings Asso..	Beaver Falls	PA
Columbia County Farmers NB.	Bloomsburg	PA
Bryn Mawr Trust Co.	Bryn Mawr	PA
Founders' Bank	Bryn Mawr	PA
First Sterling Bank	Devon	PA
Armstrong County Bldg & Loan Asso..	Ford City	PA
First Fed. S&L Asso. of Kane.	Kane	PA
Mifflin County S&L Asso..	Lewistown	PA
First Federal Savings Bank.	Monessan	PA
Parkvale Savings Asso..	Monroeville	PA
Dollar Savings Asso.	New Castle	PA
First Bank of Philadelphia.	Philadelphia	PA
United Valley Bank	Philadelphia	PA
Dollar Bank, FSB	Pittsburgh	PA
Iron and Glass Bank	Pittsburgh	PA
North Side Deposit Bank.	Pittsburgh	PA
Troy Hill FS&LA	Pittsburgh	PA
West View S&LA	Pittsburgh	PA
Berks County Bank	Reading	PA
The First NB of Bradford County.	Towanda	PA
Northwest Savings Bank.	Warren	PA
First Fed. S&L Asso. of Greene County.	Waynesburgh	PA
First Capitol Bank	York	PA
Huntington Fed. S&L Asso..	Huntington	WV
First Fed S&L Asso. of Morgantown.	Morgantown	WV
Doolin Security Savings Bank, FSB.	New Martinsville	WV
United National Bank of Parkersburg.	Parkersburg	WV
First FS&LA of Sisterville.	Sisterville	WV

Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348.

Member	City	State
United Savings Bank, FSB.	Anniston	AL

Member	City	State
Birmingham Fed S&LA.	Birmingham	AL
Citizens FS&LA	Birmingham	AL
Secor Bank, FSB	Birmingham	AL
Central State Bank	Calera	AL
First FS&LA	Cullman	AL
First Federal Savings Bank.	Decatur	AL
Southland Bank of Alabama.	Dothan	AL
First Bank and Trust	Grove Hill	AL
New South Fed. Savings Bank.	Irondale	AL
First FS&LA of Russel Co.	Phoenix City	AL
Valley FSB	Sheffield	AL
Talladega FS&LA	Talladega	AL
First Liberty National Bank.	Washington	DC
Key Florida Bank, FSB.	Bradenton	FL
Beach FS&LA	Boynton Beach	FL
Crown Savings Asso	Casselberry	FL
Harbor FS&LA	Fort Pierce	FL
Bankatlantic, a FSB	Ft. Lauderdale	FL
First FS&LA of Florida.	Lakeland	FL
American Savings of Florida.	Miami	FL
Chase Federal Bank, a FSB.	Miami	FL
Citizens Fed. Bank, FSB.	Miami	FL
Financial FS&LA of Dade County.	Miami Lakes	FL
Bancflorida, a FSB	Naples	FL
Mercantile Bank of Naples.	Naples	FL
Mid-state Fed. Savings Bank.	Ocala	FL
Metro Savings Bank, FSB.	Orlando	FL
AMSouth Bank of Florida.	Pensacola	FL
Coast Federal Bank, FSB.	Sarasota	FL
Bay Financial Savings Bank.	Tampa	FL
City Bank of Tampa	Tampa	FL
Georgia Fed. Bank, FSB.	Atlanta	GA
Homebanc Fed. Savings Bank.	Atlanta	GA
Mutual FS&LA	Atlanta	GA
The Summit National Bank.	Atlanta	GA
Carrollton Fed. Bank, FSB.	Carrollton	GA
Mount Vernon FSB	Dunwoody	GA
Community FSB	Fort Oglethorpe	GA
Crescent Bank & Trust Co.	Jasper	GA
First FSB of La Grange.	La Grange	GA
Gwinnett Fed. Bank, FSB.	Lawrenceville	GA
Chattahoochee Bank	Marietta	GA
Cobb FSB	Marietta	GA
Charter FS&LA	West Pont	GA
Baltimore American Savings Bank, FSB.	Baltimore	MD
Chase Bank of Maryland.	Baltimore	MD
Harbor FS&LA	Baltimore	MD
Loyola FS&LA	Baltimore	MD
Rosedale FS&LA	Baltimore	MD
Chevy Chase Savings Bank, FSB.	Chevy Chase	MD
Standard Fed. Savings Bank.	Gaithersburg	MD
Key Federal Savings Bank.	Owings Mills	MD
Second National FSB	Salisbury	MD
Asheville FS&LA	Asheville	NC
Home FS&LA	Charlotte	NC
C-K Fed. Savings Bank.	Concord	NC
First American Savings Bank, FSB.	Greensboro	NC
BB&T FSB of High Point.	High Point	NC
Caldwell Savings Bank, Inc.	Lenoir	NC
Centura Bank, Inc	Rocky Mount	NC
First FS&LA of Anderson.	Anderson	SC
First FS&LA of Charleston.	Charleston	SC
South Carolina FSB	Columbia	SC
First Piedmont FS&LA.	Gaffney	SC
American Federal Bank, FSB.	Greenville	SC
First FS&LA of Spartanburg.	Spartanburg	SC
First FSB of Virginia	Lynchburg	VA
Vista Fed Savings Bank.	Reston	VA
Fidelity Fed. Savings Bank.	Richmond	VA
Investors Savings Bank.	Richmond	VA
Virginia Fed. Savings Bank.	Richmond	VA

Federal Home Loan Bank of Cincinnati—District 5, Post Office Box 598, Cincinnati, Ohio 45201.

Member	City	State
First Fed S&LA of Ashland.	Ashland	KY
Carrollton Fed. S&LA	Carrollton	KY
First Lancaster Fed. Savings Bank.	Lancaster	KY
First Fed. S&LA of Leitchfield.	Leitchfield	KY
Future Fed. Savings Bank.	Louisville	KY
Family FSB of Paintsville, KY.	Paintsville	KY
Kentucky Enterprise Fed. Savings.	Newport	KY
The Jessamine First Fed. S&LA.	Nicholasville	KY
Cardinal Fed. Savings Bank.	Owensboro	KY
First Bank & Trust Co.	Princeton	KY
Bullitt County Bank	Shepardsville	KY
Industrial S&LA	Bellevue	OH
Peoples S&L Co	Bucyrus	OH
The Cincinnatus S&LA.	Cheviot	OH
Heritage Savings Bank.	Cincinnati	OH
Oak Hills S&L Co	Cincinnati	OH
Thrift S&L Co	Cincinnati	OH
The Crestline Bldg &LA.	Crestline	OH
First National Bank of Dayton.	Dayton	OH
First FS&LA of Galion.	Galion	OH
Greenville FS&LA	Greenville	OH
Columbia FS&LA of Hamilton.	Hamilton	OH
The Hicksville Bldg L&S Co.	Hicksville	OH
Lawrence Fed. S&LA	Ironton	OH
Home Savings Bank	Kent	OH
Home Fed. Sav. Bank, Northern OH.	Lakewood	OH
Peoples FS&LA of Massillon.	Massillon	OH
Metro Savings Asso	Mayfield Heights	OH
Miami S&L Co	Miamitown	OH
First FS&LA of Newark.	Newark	OH
Geauga Savings Bank.	Newbury	OH
Cleves-North Bend Bldg & Loan Co.	North Bend	OH
American S&LA	Portsmouth	OH
People FS&LA	Sidney	OH
Monroe FS&LA	Tipp City	OH
Van Wert Fed. Savings Bank.	Van Wert	OH
First FS&LA of Van Wert.	Van Wert	OH
The Home S&LA	Wapakoneta	OH
Adams County Bldg & Loan Co.	West Union	OH
First FS&LA of Youngstown.	Youngstown	OH
Maury Fed. Savings Bank.	Columbia	TN
First Fidelity Sav. Bank, FSB.	Crossville	TN
Progressive Savings Bank, FSB.	Jamestown	TN
Home FS&LA of Upper E. TN.	Johnson City	TN
Home Fed. Bank of Tennessee.	Knoxville	TN
American Savings Bank.	Livingston	TN
First Southern FSB	Nashville	TN
First FSB of W. TN	Selmer	TN

Federal Home Loan Bank of Indianapolis—District 6, Post Office Box 60, Indianapolis, Indiana 46205-0060.

Member	City	State
Peoples Fed. Savings Bank.	Aurora	IN
Farmers & Mechanics Fed. S&LA.	Bloomfield	IN
The First State Bank	Bourbon	IN
English State Bank	English	IN
Evansville Fed. Savings Bank.	Evansville	IN
Union Fed. Savings Bank.	Evansville	IN
The Farmers Bank	Frankfort	IN
First Fed. S&LA of Greensburg.	Greensburg	IN
Lake Fed. S&LA of Hammond.	Hammond	IN
City Savings Bank	Hartford City	IN
Shelby Fed. Savings Bank.	Indianapolis	IN
First Commerce Savings Bank, FSB.	Lowell	IN
Muncie Fed. S&LA	Muncie	IN
Lincoln Fed. Savings Bank.	Plainfield	IN
Peoples Fed. Sav. Asso.	Richmond	IN
First FS&LA of Rushville.	Rushville	IN
Scottsburg Bldg&LA	Scottsburg	IN
Home Fed. Savings Bank.	Seymour	IN
Owen Fed. Savings Bank.	Spencer	IN

Member	City	State
First Farmers State Bank.	Sullivan	IN
First Fed. S&LA of Washington.	Washington	IN
Northwestern Savings Bank and Trust.	Traverse City	MI

Federal Home Loan Bank of Chicago—District 7, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Member	City	State
First FS&LA of Barrington.	Barrington	IL
American Union S&LA.	Chicago	IL
Archer Fed. S&LA	Chicago	IL
Avondale Fed. Savings Bank.	Chicago	IL
Labe FS&LA	Chicago	IL
Liberty Bank for Savings.	Chicago	IL
Lincoln Park Fed. S&LA.	Chicago	IL
New Asia Bank	Chicago	IL
Washington S&LA of Chicago.	Chicago	IL
West Town S&LA	Cicero	IL
Home Fed. S&LA of Collinsville.	Collinsville	IL
First FS&LA of Des Plaines.	Des Plaines	IL
First Granite City S&L.	Granite City	IL
Security Savings Bank, FSB.	Hillsboro	IL
Hinsdale FS&LA	Hinsdale	IL
Eureka S&LA of La Salle.	La Salle	IL
Lawrenceville FS&LA	Lawrenceville	IL
Lisle S&LA	Lisle	IL
Milford Building &LA	Milford	IL
The Farmers Bank	Mount Pulaski	IL
Superior Bank, FSB	Oak Brook Terrace.	IL
Ottawa FS&LA	Ottawa	IL
First FS&LA of Pekin	Pekin	IL
River Valley Savings Bank, FSB.	Peoria	IL
Rochelle S&LA	Rochelle	IL
First FS&LA	Shelbyville	IL
United S&LA	Springfield	IL
First Fed. Bank, FSB	Waukegan	IL
Kenosha S&LA	Kenosha	WI
The Home S&LA	Madison	WI
Badger Bank, SSB	Milwaukee	WI
Paper City Savings Asso.	Nekoosa	WI
West Bend Savings Bank, St. Asso.	West Bend	WI

Federal Home Loan Bank of Des Moines—District 8, 907 Walnut Street, Des Moines, Iowa 50309.

Member	City	State
Hawkeye Fed. Savings Bank.	Boone	IA
Page County S&LA	Clarinda	IA
First Fed. S&LA of Lincoln-Iowa.	Council Bluffs	IA
State Fed. S&LA of Des Moines.	Des Moines	IA
Keokuk Fed. S&LA	Keokuk	IA
The Marshalltown S&LA.	Marshalltown	IA
Northwest Fed. Savings Bank.	Spencer	IA
First State Bank of Big Fork.	Big Fork	MN
St. Louis County Fed. S&LA.	Duluth	MN
First Fed. S&LA of Hastings.	Hastings	MN
Lake Elmo Bank	Lake Elmo	MN
Northwoods Bank of Minnesota, N.A.	Park Rapids	MN
Queen City S&LA	Virginia	MN
Missouri Federal Savings Bank.	Cameron	MO
First Fed. S&LA of Kansas City.	Kansas City	MO
Sentinel Fed. S&LA of Kansas City.	Kansas City	MO
Neosho S&LA	Neosho	MO
Home S&LA of Norbone.	Norbone	MO
Central Fed. S&LA	Rolla	MO
First State Savings Asso.	Sedalia	MO
Guaranty Fed. S&LA of Springfield.	Springfield	MO
Midwest Fed. S&LA of St. Joseph.	St. Joseph	MO
New Age Fed. S&LA of St. Louis.	St. Louis	MO

Federal Home Loan Bank of Dallas—District 9, 5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038.

Member	City	State
First Fed. S&LA	Camden	AR
Pocahontas Fed. S&LA.	Pocahontas	AR
Abbeville Bldg & LA	Abbeville	LA
Beauregard Fed. Savings Bank.	DeRidder	LA
First Fed. S&LA	Lake Charles	LA
Minden Bldg & LA	Minden	LA
Alerion Bank	New Orleans	LA
Carrollton Homestead Asso.	New Orleans	LA
Fifth District S&LA	New Orleans	LA
Globe Homestead Asso.	New Orleans	LA
Union S&LA	New Orleans	LA
Southland Fed. Savings Bank.	Opelousas	LA
Magnolia Fed. Bank For Savings.	Hattiesburg	MS
Inter-City Fed. Savings Bank.	Louisville	MS
Security Trust Fed. S&LA.	Knoxville	TN
Dona Ana S&LA	Las Cruces	NM
Centre Savings Asso	Arlington	TX
Fidelity Savings-Austin FA.	Austin	TX
Franklin Federal Bancorp FSB.	Austin	TX
Horizon Savings Assoc.	Austin	TX
First American Savings Bank.	Bedford	TX
Davy Crockett Fed. Savings Bank.	Crockett	TX
Cuero Fed. S&LA	Cuero	TX
Dalhart Federal S&LA.	Cuero	TX
Sun World Savings Bank FSB	El Paso	TX
Fayette Savings Asso.	LaGrange	TX
Terrell Federal S&LA	Terrell	TX
First Southwest FS&LA.	Tyler	TX

Federal Home Loan Bank of Topeka—District 10, Post Office Box 176, Topeka, Kansas 66601.

Member	City	State
Pitkin County Bank	Aspen	CO
Delta S&LA	Delta	CO
Frontier Bank of Denver.	Denver	CO
Vectra Bank	Denver	CO
Vectra Bank-Englewood.	Englewood	CO
Gunnison S&LA	Gunnison	CO
Thatcher Bank, FSB	Salida	CO
Alpine Bank	Snowmass Village	CO
Bank Northwest	Steamboat Springs	CO
First Fed. S&LA of Lincoln.	Council Bluffs	IA
Golden Belt Banking & SA.	Ellis	KS
Southwestern S&LA of Hugoton.	Hugoton	KS
Argentine S&LA	Kansas City	KS
Conservative Savings Bank.	Omaha	NE
First State Bank	Keyes	OK
First Commercial Bank, SSB.	Lawton	OK
Lakeside State Bank	Oologah	OK
Heartland Fed. S&LA	Ponca City	OK
Local America Bank of Tulsa, a FSB.	Tulsa	OK

Federal Home Loan Bank of San Francisco—District 11, 307 East Chapman Avenue, Orange, California 92666.

Member	City	State
First Arizona Savings and Loan Asso.	Glendale	AZ
First Bank of Beverly Hills, SSB.	Beverly Hills	CA
Fidelity Federal Bank, FSB.	Glendale	CA
Far West Savings and Loan Asso.	Irvine	CA
Broadway FS&LA of Los Angeles.	Los Angeles	CA
California Federal Bank, a FSB.	Los Angeles	CA
Coast Federal Bank, FSB.	Los Angeles	CA
East-West Federal Bank, FSB.	Los Angeles	CA
Cornerstone Bank, SSB.	Mission Viejo	CA
El Dorado Savings Bank.	Placerville	CA
Commerce Savings Bank.	Sacramento	CA
California Savings and Loan, a FA.	San Francisco	CA
Citibank Federal Savings Bank.	San Francisco	CA
First Nationwide Bank, a FSB.	San Francisco	CA
Bay View FS&LA	San Mateo	CA

Member	City	State
First FS&LA of San Rafael.	San Rafael	CA
County Bank, a FSB	Santa Barbara	CA
First Federal Bank of California, FSB.	Santa Monica	CA
American Savings Bank, FA.	Stockton	CA
First FS&LA of San Gabriel Valley.	West Covina	CA

Federal Home Loan Bank of Seattle—District 12, 1501 4th Avenue, Seattle, Washington 98101–1693.

Member	City	State
American Savings Bank FSB.	Honolulu	HI
Ireland Bank	Malad City	ID
Security Federal Savings Bank.	Billings	MT
United Savings Bank, FA.	Great Falls	MT
Heritage Bank, a FSB.	Great Falls	MT
American FS&LA of Helena.	Helena	MT
Western FSB of Montana.	Missoula	MT
Treasure-Land S&LA	Ontario	OR
Logan Savings and Loan Asso.	Logan	UT
First Federal Savings Bank.	Salt Lake City	UT
Capital City Bank	South Salt Lake	UT
Timberland FS&LA	Hoquiam	WA
North Sound Bank	Poulsbo	WA
First FS&LA of Renton.	Renton	WA
Pacific Federal Savings Bank.	Seattle	WA
Buffalo FS&LA	Buffalo	WY

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBank no later than March 31, 1992.

All public comments concerning the Community Support performance of selected members must be submitted to the member's FHLBank no later than March 31, 1992.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

By the Federal Housing Finance Board.

Dated: February 5, 1992.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92–3172 Filed 2–10–92; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Los Angeles, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200322–001.

Title: City of Los Angeles/Auto Warehousing, Inc.

Parties:

City of Los Angeles

Auto Warehousing, Inc.

Synopsis: This agreement, filed January 31, 1992, adds 4.5 acres to the original premises and sets the compensation to be paid at the rate specified in Port of Los Angeles Tariff No. 4. The addition is cancellable on thirty (30) days written notice.

Agreement No.: 224–200613.

Title: Georgia Ports Authority/Atlantic Container Line Terminal Agreement.

Parties:

Georgia Ports Authority ("GPA")

Atlantic Container Line ("ACL")

Synopsis: This Agreement, filed January 30, 1992, provides that GPA will assign ACL premises at Container Berth 5 for the storage and handling of containers, and ACL will pay GPA a per-container-charge consolidated rate (inclusive of wharfage, crane rental, slot use, stevedore use fee, etc.) for ship services. The consolidated rate will be $26.60 per TEU on or off vessels for loaded containers, and $17.10 for empty containers. Charges for additional field services are also specified. The term of the agreement is one year with an option to renew for two one-year periods.

Agreement No.: 202–008090–034.

Title: Mediterranean North Pacific Coast Freight Conference.

Parties:

"Italia" di Navigazione, S.p.A./d'Amico Societa di Navigazione per Azioni

Splosna Plovba—Piran

Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would delete Canada from the geographic scope and delete other references to Canada in the Agreement.

Agreement No.: 217–011324–005.

Title: Transpacific Space Utilization Agreement.

Parties:

TWRA Conference Parties:

American President Lines, Ltd.

Kawasaki Kisen Kaisha, Ltd.

A.P. Moller-Maersk Line

Mitsui O.S.K. Lines, Ltd.

Neptune Orient Lines, Ltd.

Nippon Yusen Kaisha, Ltd.

Sea-Land Service, Inc.

Orient Overseas Container Line

Independent Carrier Parties:

Hanjin Shipping Company, Ltd.

Transportacion Maritima Mexicana, S.A. de C.V. (Mexican Line)

Yang Ming Lines

Synopsis: The proposed amendment would add Westwood Shipping Lines as an independent carrier party to the Agreement.

Dated: February 5, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–3139 Filed 2–10–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Grayson Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 9, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Grayson Bankshares, Inc., Independence, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Grayson National Bank, Independence, Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. TB&C Bancshares, Inc., and Synovus Financial Corporation, Columbus, Georgia; to acquire 100 percent of the voting shares of Citizens First Bank, Rome, Georgia, a *de novo* bank. Synovus Financial Corporation will convert its current subsidiary, Citizens Federal Savings Bank of Rome, Rome, Georgia, to Citizens First Bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Financial Corporation, and First State Bank of Arthur, both of Arthur, North Dakota; to acquire 100 percent of the voting shares of First State Bank of Buffalo, Buffalo, North Dakota. In connection with this application, First State Bank of Arthur has also applied to become a bank holding company.

Board of Governors of the Federal Reserve System, February 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-3155 Filed 2-10-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual casses, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 012092 AND 013192

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
The Dow Chemical Company, The Merchant Navy Officers Pension Fund, EOG (New Mexico) Inc	92-0485	01/21/92
George L. Argyos, American Cyanamid Company, Applied Solar Energy Corporation	92-0462	01/23/92
AB Investor, Forvaltnings AB Providentia, Forvaltnings AB Providentia	92-0481	01/23/92
Phoenix Mutual Life Insurance Company, Home Life Insurance Company, Home Life Insurance Company	92-0492	01/23/92
The Dow Chemical Company, Koch Industries, Inc., Koch Protective Treatments, Inc	92-0458	01/23/93
Automatic Data Processing, Inc., The Independent Election Corporation of America, The Independent Election Corporation of America	92-0497	01/24/92
Mercantile Stores Company, Maison Blanche, Inc., Maison Blanche, Inc	92-0524	01/24/92
Carl M. Bouckaert and Marie T. Bouckaert, Interloom International, Inc., Interloom International, Inc	91-1349	01/27/92
M. Edward Ralston, Interloom International, Inc., Interloom International, Inc	91-1350	01/27/92
WICOR, Inc., Autotrol Corporation, Autotrol Corporation	92-0463	01/27/92
Century Telephone Enterprises, Inc., Centel Corporation, Central Telephone Company of Ohio	92-0491	01/27/92
Landmark Communications, Inc., Carl C. Icahn, The Travel Channel, Inc.,	92-0501	01/27/92
Martin H. Rutchik, Polly Peck International plc, Standard Fruit and Vegetable Co., Inc., and	92-0509	01/27/92
Motorola, Inc., Echelon Corporation, Echelon Corporation	92-0513	01/27/92
The May Department Stores Company, JMB Income Properties, Ltd.-XII, JMB/Mid Rivers Associates	92-0487	01/28/92
The Prudential Insurance Company of America, JMB Income Properties, Ltd.-XII, JMB/Mid Rivers Associates	92-0488	01/28/92
The Prudential Insurance Company of America, JMB Income Propertries, Ltd.-XIII, JMB/Mid Rivers Associates	92-0489	01/28/92
The May Department Stores Company, JMB Income Properties, Ltd.-XIII, JMB/Mid Rivers Associates	92-0490	01/28/92
MAPCO Inc., Jack W. Hanks, The Maple Gas Corporation & The Maple Gathering	92-0473	01/29/92
Daganeve Foundation, Gadra Trust Settlement, Tetra Pak Inc	92-0539	01/29/92
General Electric Company, Hechinger Company, Hechinger Company	92-0549	01/29/92
Horrigan American, Inc., General Electric Company, Reli Financial Corp	92-0459	01/30/92
Stichting Ingka Foundation, STOR Furnishings International, Inc., STOR Furnishings International, Inc	92-0496	01/30/92
Suntory Finance, Kotobuki Fudosan Ltd., PepCOm Industries, Inc	92-0499	01/30/92
N.V. Philips, Steve Golin, Golin/Sighvatsson, Inc. & Propaganda Films	92-0505	01/30/92
N.V. Philips, Sigurjon Sighvatsson, Golin/Sighvatsson, Inc. & Propaganda Films	92-0506	01/30/92
Republic Waste Industries, Inc., Stout Environmental, Inc., Stout Environmental, Inc	92-0516	01/30/92

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 012092 AND 013192—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
General Electric Company, George P. Ballas, George P. Ballas Leasing, Inc	92-0522	01/31/92
Mr. Harunori Takahashi, Robert H. Burns, Regent International Hotels Limited (Hong Kong Corp.)	92-0525	01/31/92
Matsushita Electric Industrial Co., Ltd., Fleet Call, Inc., Fleet Call, Inc	92-0527	01/31/92
Mr. Harunori Takahashi, Regent International Hotels California Corporation, Regent International Hotels California Corporation	92-0529	01/31/92
The Alpine Group, Inc., Hitachi Koki Co., Ltd., Dataproducts New England, Incorporated	92-0530	01/31/92
Trammell Crow Equity Partners II, Ltd., Marcourt Investments Incorporated, Marcourt Investments Incorporated	92-0538	01/31/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580 (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-3194 Filed 2-10-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0130]

Research Procurement Co.; Revocation of U.S. License No. 692

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 692) and the product license issued to Research Procurement Co. for the manufacture of Source Plasma. A notice of opportunity for a hearing (NOOH) on a proposal to revoke the licenses was published in the **Federal Register** of May 31, 1991 (56 FR 24820). Research Procurement Co. neither requested a hearing nor submitted any data in support of a hearing in response to the NOOH.

DATES: The revocation of the above establishment and product licenses is effective on February 11, 1992.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines, Center for Biologics Evaluation and Research (HFB-132), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA is revoking the establishment license (U.S. License No. 692) and product license issued to Research Procurement Co. for the manufacture of Source Plasma. Research Procurement Co.'s business office is located at 9918A Holmes Rd., Kansas City, MO 64131, while Research Procurement Co.'s plasmapheresis facilities are located at 6040 Troost Ave., Kansas City, MO 64110.

By letter dated November 16, 1990, FDA advised Research Procurement Co. that FDA intended to initiate proceedings to revoke the licenses. Accordingly, FDA published a NOOH on the proposed revocation of the licenses in the **Federal Register** of May 31, 1991 (56 FR 24820), pursuant to 21 CFR 12.21(b), as provided in 21 CFR 601.5(b). In the NOOH, FDA explained the grounds for its determination that the licenses should be revoked. That information included the following: (1) The results of the most recent FDA inspection of Research Procurement Co. in September 1990; (2) the results of an FDA investigation of Research Procurement Co. conducted concurrently with the September 1990 inspection; (3) a determination by FDA that the deviations documented during the September 1990 inspection and investigation of Research Procurement Co. constituted a danger to public health; and (4) a determination by FDA that the inspectional history of Research Procurement Co. demonstrated a distinct pattern of continued noncompliance with, and careless disregard for, the regulations designed to assure the continued safety, purity, and potency of Source Plasma and to assure a continuous and healthy Source Plasma donor population. FDA noted that documentation in support of the proposed revocations had been placed on file for public examination with the Dockets Management Branch (HFA-305). Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The NOOH provided 30 days within which Research Procurement Co. was to submit any written request for a hearing, as specified in 21 CFR 12.21(b), and 60 days within which Research Procurement Co. was to submit any written data justifying a hearing. The NOOH further provided 30 days within which other interested persons could submit written comments on the proposed revocations. FDA advised Research Procurement Co., by telephone, that the NOOH had been published, and forwarded a copy of the NOOH to Research Procurement Co., by facsimile transmission, on June 7, 1991.

The Responsible Head of Research Procurement Co. responded to the NOOH by letter dated June 27, 1991. In that letter, the Responsible Head of Research Procurement Co. stated that the "* * * time lapse since the (license suspension in September 1990), the cost involved to review the evidence in Washington with an attorney, makes it impossible as a small business to pursue my defense any further, not because I feel the allegations are correct, but because of the financial hardship it presents to us (sic)."

Research Procurement Co.'s response neither requested a hearing nor submitted data in support of a hearing on the proposed license revocations. No other written comments on the proposed revocations were received within the prescribed 30 days specified in the NOOH. Accordingly, under 21 CFR 12.38(a)(1), 601.7, 601.8, and the Public Health Service Act (sec. 351 (42 U.S.C. 262)), and the authority delegated in 21 CFR 5.67(d), the establishment license (U.S. License No. 692) and the product license issued to Research Procurement Co. for the manufacture of Source Plasma are revoked, effective February 11, 1992.

Dated: February 4, 1992.

Janet Woodcock,

Acting Director, Center for Biologics, Evaluation and Research.

[FR Doc. 92-3167 Filed 2-10-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92F-0014]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive

regulations be amended to increase the level of safe use of 2-(2*H*-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl) phenol as a stabilizer in polycarbonate resins intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4306) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to increase the level of safe use of 2-(2*H*-benzotriazol-2-yl)-4, 6-bis (1-methyl-1-phenylethyl) phenol as a stabilizer in polycarbonate resins intended for contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 4, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–3220 Filed 2–10–92; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87F–0333]

Kelco, Division of Merck & Co., Inc.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a petition filed by Kelco, Division of Merck & Co., Inc., to provide for the safe use of gellan gum as stabilizer and thickener in foods, generally. Kelco, Division of Merck & Co., Inc., has amended its petition for gellan gum to request that the 5 percent limitation for acyl (glyceryl and acetyl) groups be removed.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204 202–254–9515.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 2, 1987 (52 FR 45867 at 45868), FDA announced that a petition (FAP 7A4022) had been filed by Kelco, Division of Merck & Co., Inc., 8355 Aero Dr., San Diego, CA 92123, proposing that 21 CFR part 172—Food Additives Permitted for Direct Addition to Food for Human Consumption be amended to provide for the safe use of gellan gum as a stabilizer and thickener in food, generally. Kelco, Division of Merck and Co., Inc., is further proposing that § 172.665 *Gellan gum* (21 CFR 172.665) be amended in paragraph (a) to remove the 5 percent limitation for acyl (glyceryl and acetyl) groups, as a result of the refining of the processing conditions of gellan gum.

Dated: February 4, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutirtion.

[FR Doc. 92–3221 Filed 2–10–92; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 92D–0040]

Priority Enforcement Strategy for Problem Importers; Regulatory Procedures Manual Chapter 9–87; Revision; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised Regulatory Procedures Manual (RPM), Chapter 9–87 "Priority Enforcement Strategy For Problem Importers." The revision lists criteria for consideration for priority attention, and for consideration of legal actions (warning letters, recalls, seizures, injunctions, and prosecutions) in import cases.

ADDRESSES: Submit written requests for single copies of the revised RPM Chapter 9–87 to Import Operations (HFC–131), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. RPM Chapter 9–87 is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary J. Ayling, Import Operations (HFC–131), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

SUPPLEMENTARY INFORMATION: The agency advises that this revision to RPM Chapter 9–87 represents its current definition of a problem importer. RPM Chapter 9–87 may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The statements made in the revised chapter are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: February 4, 1992.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 92–3166 Filed 2–10–92; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Pennsylvania State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 17, 1992 at 10 a.m. in room 3030, 3535 Market Street, Philadelphia, Pennsylvania to reconsider our decision to disapprove Pennsylvania SPA 88–05.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by February 26, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, CF, 1849 Gwynn Oak Avenue, Meadowwood East Building, Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Pennsylvania State plan amendment (SPA) number 88–05.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency

that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Pennsylvania SPA 88-05 seeks protection under section 1902(r)(2) of the Act from income and resource policies which Pennsylvania believes are more liberal than those which are used by the Supplemental Security Income (SSI) and Aid to Families with Dependent Children (AFDC) programs.

The issues in this matter are whether: (1) The proposed income policies have the potential for exceeding the Federal financial participation (FFP) limits at section 1903(f) of the Act and, therefore, violate section 1902(a)(4) and (19) of the Act; (2) the proposed resource policy concerning property used in a trade or business is more restrictive than SSI policy and therefore does not qualify for approval under section 1902(r)(2) of the Act; and, (3) contrary to section 1902(a)(17) of the Act, the proposed post-eligibility changes contain standards for determining the extent of medical assistance to be received which are not in accordance with the standards prescribed by the Secretary for the post-eligibility process.

In general, the Medicaid statute requires States to use the eligibility criteria of the SSI program in determining eligibility for aged, blind, and disabled individuals, and the criteria of the AFDC program for families with dependent children. (See section 1902(a)(10)(A) of the Act.) Under section 1902(r)(2) of the Act, States may use more liberal methodologies than are used by the cash assistance programs in determining Medicaid eligibility for certain groups of individuals. Also, States may not use more liberal methodologies in determining income eligibility if those methodologies would result in the FFP limits provided for at section 1903(f) of the Act being exceeded.

Because FFP limits under section 1903(f) remain unchanged, application of more liberal income methods under section 1902(r)(2) to those eligibility groups which are subject to section 1903(f) limits might result impermissibly in these limits being exceeded.

HCFA has elected to disapprove policies that will result in FFP limits being exceeded. Disapproval authority is found under sections 1902(a) (4) and (19) of the Act. Under section 1902(a)(4) of the Act, States must provide such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan. HCFA believes the decision not to approve policies which will result in FFP limits being exceeded is consistent with this requirement as it is the most efficient manner of handling the interface between the eligibility requirements and FFP limits. Under section 1902(a)(19) of the Act, the plan must provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients.

Eligibility Groups

In its SPA, Pennsylvania has identified some of its eligibility groups to be covered under section 1902(r)(2) of the Act as AFDC and SSI related categorically needy nonmoney payment and medically needy only applicants/recipients. This characterization is not specific enough for HCFA to clearly identify which groups are covered and which are not. Section 1902(r)(2) of the Act does not apply to all eligibility groups. Rather, certain groups (e.g., deemed cash assistance recipients) are excluded. In the absence of a clear specification of eligibility groups, HCFA disapproved those policies where groups are identified as AFDC and/or SSI related categorically needy nonmoney payment groups. Where such a policy is also identified as applying to the medically needy, any approval of the policy will apply to the medically needy only.

The statutory basis for this disapproval would also be section 1902 (a)(4) and (a)(19) of the Act. HCFA believes the uncertainty caused by the amendment by its failure to specify to which groups the policies are to apply does not contribute to proper and efficient administration of the plan, nor is it consistent with simplicity of administration and the best interest of recipients.

Eligibility Groups and FFP Limits

Section 1903(f) of the Act sets limits on the amount of income applicants/recipients can have and still have FFP available for their medical care. However, the FFP limits do not apply to all eligibility groups.

Rather, section 1903(f)(4) of the Act excludes certain groups from application of the FFP limits. HCFA believes the State's broad characterization of its eligibility groups discussed above creates similar problems with regard to determining to which groups in SPA 88-05 the FFP limits apply. Therefore, HCFA also disapproved, as violating the FFP limits, and policy where the applicable groups are identified as being AFDC and/or SSI related categorically needy nonmoney payment groups.

HCFA believes the statutory basis for this disapproval would also be sections 1902 (a)(4) and (a)(19) of the Act. The uncertainty caused by the amendment by its failure to specify to which groups the policies are to apply does not contribute to proper and efficient administration of the plan, nor is it consistent with simplicity of administration and the best interest of recipients.

Income Policies—Supplement 11 to Attachment 2.6-A

AFDC-Related

Lump Sum

Under the amendment, the receipt of a lump sum would normally be treated as a resource. However, when it would be more beneficial to the applicant/recipient to treat the lump sum in accordance with the AFDC cash assistance rules, those rules would be applied.

Work Expenses Deduction

Under the amendment, AFDC-related cases with earned income are entitled to a work expense deduction of actual and verified monthly work expenses of $75, whichever is greater.

Self-Employment Deduction

Under the amendment, AFDC-related medically needy only applicants/recipients with self-employment income are given a deduction for depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods.

Income policies for the AFDC program are set forth in 45 CFR 233 *et seq.* HCFA believes the income policies proposed by the State are more liberal than those used by the AFDC program.

However, HCFA believes that, while

the State's proposal is more liberal than AFDC, it also has the potential for exceeding the FFP limits at section 1903(f) of the Act. Additional deductions, such as the State proposes, could result in individuals' incomes exceeding the FFP limits. Therefore, HCFA believes, to the extent that the FFP limits apply to the groups which the State proposes to cover under its proposal, the income disregards cited above cannot be approved under section 1902(r)(2) of the Act. Where the FFP limits do not apply to a particular group, the income disregards cited above were approved under section 1902(r)(2) of the Act for that group.

AFDC and SSI-Related

Deduction for Recurring Medical Expenses

Under the amendment, SSI and AFDC-related medically needy-only applicants/recipients are permitted to project verified recurring and predictable medical expenses for the six month eligibility period.

This policy involves a disregard from income in the amount of certain medical expenses projected to be incurred for the medically needy. The policy is more liberal than the methods used by the cash assistance programs (which do not have a spenddown or a deduction of projected verified and predictable medical expenses). However, as with the income policies discussed above, HCFA believes this policy has the potential for violating the FFP limits in section 1903(f) of the Act. If an individual has income above the maximum allowed for FFP purposes and projects expenses which are in fact not incurred, he or she could receive medical assistance which is not entitled to FFP. Since the State plan does not contain a methodology for identifying instances where this occurs and for ensuring that any claims for FFP made on behalf of individuals in this situation will be withdrawn, HCFA disapproved this policy as violating sections 1902 (a)(4) and (a)(19) of the Act. A provision of the amendment which has the potential for generating claims for FFP on behalf of individuals with income in excess of the cap and which does not include a mechanism to protect against submission of such claims is not a method of administration consistent with the proper and efficient operation of the plan. In addition, it is not consistent with simplicity of administration and the best interests of recipients.

Treatment of Veterans Administration Aid and Attendance and Housebound Allowances

Under the amendment, these allowances are not income in the eligibility or the post eligibility determination process.

In determining AFDC eligibility, States need not take into account Department of Veterans Affairs aid and attendance and housebound allowances for a member of the AFDC assistance unit so long as these amounts are used to purchase care which is not covered under the AFDC need standard and the care is not purchased from another member of the assistance unit. Similarly, such allowances are not counted under the SSI program for eligibility purposes (20 CFR 426 subpart K). Thus, there is no need for a section 1902(r)(2) amendment to permit use of this deduction. Therefore, HCFA approved the eligibility portion of this provision because it does not conflict with the requirements of section 1902(r)(2).

With regard to post-eligibility, section 1902(r)(2) of the Act is applicable only to cash assistance eligibility methodologies. It is not applicable to the post-eligibility process. Thus, HCFA disapproved this portion of SPA 88–05 under section 1902(a)(17) of the Act because it does not contain the methodology specified by the Secretary for determining the extent of assistance to be provided under the post-eligibility process.

SSI-Related

Support and Maintenance In-Kind

Support and maintenance in-kind is not counted as income.

SSI income methodologies are set forth in regulations at 20 CFR 416.1130. Briefly, these regulations provide that in-kind support and maintenance is counted as income for SSI purposes with its value determined under specific rules of that program. Thus, the State's proposed policy is more liberal than SSI. HCFA believes a possible violation of the FFP limits under section 1903(f) of the Act is applicable to this policy. Thus, HCFA disapproved this portion of SPA 88–05, for the same reasons and under the same conditions as discussed above in relation to AFDC policies.

Resources—SSI-Related

Property Used in a Trade or Business

Under the amendment, the applicant/recipient's equity interest in property used in a trade or business essential to self-support is excluded, subject to a maximum of $15,000. The exclusion is applicable only if the property produces an annual net return of at least 6 percent of the excludable equity value.

The State maintains that this policy is more liberal than SSI. However, the Omnibus Budget Reconciliation Act of 1989 removed the limit on the value used in a trade or business which can be excluded as a resource under the SSI program. While SSI places no limit on the amount of this deduction, the State proposes a limit of $15,000. The result is that the State's policy is actually more restrictive rather than more liberal than SSI. As such, HCFA disapproved this portion of the plan under section 1902(r)(2) of the Act.

The notice to Pennsylvania announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. John White, Secretary, Department of Public Welfare, Room 333, Health and Welfare Building, Harrisburg, Pennsylvania 17120

Dear Mr. White: I am responding to your request for reconsideration of the decision to disapprove Pennsylvania State Plan Amendment (SPA) 88–05.

Pennsylvania SPA 88–05 seeks protection under section 1902(r)(2) of the Social Security Act (the Act) for income and resource policies which Pennsylvania believes are more liberal than those which are used by the Supplemental Security Income (SSI) and Aid to Families with Dependent Children programs.

The issues in this matter are whether: (1) The proposed income policies have the potential for exceeding the Federal financial participation (FFP) limits at section 1903(f) of the Act and, therefore, violate section 1902(a)(4) and (19) of the Act; (2) the proposed resource policy concerning property used in a trade or business is more restrictive than SSI policy and therefore does not qualify for approval under section 1902(r)(2) of the Act; and, (3) contrary to section 1902(a)(17) of the Act, the proposed post-eligibility changes contain standards for determining the extent of medical assistance to be received which are not in accordance with the standards prescribed by the Secretary for the post-eligibility process.

I am scheduling a hearing on your request for reconsideration to be held on March 17, 1992 at 10 a.m. in room 3030, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

Gail R. Wilensky,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: February 2, 1992.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 92-3150 Filed 2-10-92; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-02-4320-02]

Meeting of the Safford District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATES: Friday, March 6, 1992, 9 a.m.

ADDRESSES: BLM Office, 425 E. 4th St., Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463. The agenda for the meeting will include:

1. Discussion of Hot Well Dune Recreation Area.
2. BLM Management Update.
3. Business from the Floor.
4. Tour to Hot Well Dunes Recreation Area and southwest portion of Tanque Grazing Allotment.

The meeting will be open to the public. Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager by 4:15 p.m., Thursday, March 5, 1992, at 425 E. 4th St., Safford, AZ 85546.

At the conclusion of the meeting, Board members will depart via BLM provided vehicles for a tour of the Hot Well Dunes Recreation Area and the southwest portion of the Tanque Grazing Allotment Number 51080. Members of the public may accompany the tour, but must provide their own transportation. It is expected the Board members will return to Safford by 4 p.m.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: January 31, 1992.

Ray A. Brady,

District Manager.

[FR Doc. 92-3129 Filed 2-10-92; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR 18).

Applicant

Name: U.S. Fish & Wildlife Service File no. 690715, Alaska Fish & Wildlife Research Center.

Address: 1011 E Tudor Road, Anchorage, Alaska 99503.

Type of Permit: Scientific Research.

Name and Number of Animals: Walrus (*Odobenus rosmarus divergens*)

Summary of Activity to be Authorized: Renewal of permit to continue take of up to 5 walruses which may be chemically immobilized using any disassociative, narcotic and/or barbiturate immobilizing drugs, tagged (double tagged on flippers), radio-tagged with satellite-linked transmitters, and administered oxytetracycline HCL (for protection from secondary pneumonia and to mark the teeth for future identification). The renewal would allow for continuation of the following take activities with an unspecified number of walruses: (1) Collection of biological samples from walruses found dead or that die during the activities conducted under this permit; (2) Import of biological samples; and (3) Recapture of tagged walruses for replacement of malfunctioning radio-transmitters. In addition, as part of the radio-tagging process, an unspecified number of animals may be inadvertently harassed during subsequent radio-tracking flights. The study is for purposes of scientific research to aid in the understanding of the population dynamics of the species.

Source of Marine Mammals for Research: Bering Sea.

Period of Activity: April 1992 to August 1994.

Concurrent with the publication of this notice, the Office of Management Authority is forwarding copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments and/or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with this applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: February 5, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-3130 Filed 2-10-92; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31968]

The Buffalo Creek Railroad Co.; Acquisition and Operation Exemption—Buffalo Creek and Gauley Railroad Co.

The Buffalo Creek Railroad Company (BCR), a noncarrier, filed a notice of exemption to acquire and operate the entire 18.6-mile rail system of Buffalo Creek and Gauley Railroad Company (Gauley), extending between milespost 0.0, at or near Dundon, and milepost 18.6, at or near Widen, in Clay County, WV. The notice of exemption became effective on November 22, 1991, 7 days after it was filed (*see* 49 CFR 1150.32(b)), and the transaction apparently has been consummated.[1]

[1] According to BCR's verified notice, the parties intended to consummate the transaction on November 24, 1991. They apparently did so, since

Continued

The notice of exemption is directly related to the petition for exemption filed in Finance Docket No. 31969, *William T. Bright—Control Exemption—The Buffalo Creek Railroad Company*, in which William T. Bright, the owner of The Elk Creek Railroad Company, seeks an exemption from the prior approval requirements of 49 U.S.C. 11343 to acquire control of BRC. Pending a grant of an exemption in that case, all BRC stock owned by Mr. Bright has been placed in an independent voting trust. The voting trust agreement is to be dissolved, and the BRC shares returned to Mr. Bright, upon effectiveness of the exemption in Finance Docket No. 31969.

Any comments must be filed with the Commission and served on Robert D. Rosenberg, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 5, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-3159 Filed 2-10-92; 8:45 am]

BILLING CODE 7035-01-M

John M. Turner, Gauley's president, confirmed in a letter filed January 14, 1992, that Gauley "is no longer a common carrier by rail," having sold its line and all other operating assets to BRC. In that letter, Mr. Turner also indicated that, as a result of the sale, he was "surrender[ing] its [Gauley's] Certificate of Public Convenience and Necessity to the Commission." The act of surrendering the certificate to the Commission is unnecessary, however, because consummation of the acquisition and operation transaction effectively transferred Gauley's certificate to BRC. *See* Finance Docket No. 31545, *et al., Clyde S. and Saundra Forbes and CSF Acquisition, Inc.—Control Exemption—Lamoille Valley Railroad Company and Twin State Railroad Corporation* (not printed), served October 8, 1991.

Because Gauley has ceased to be a common carrier by rail, there is no further need for the January 1, 1986, Voting Trust Agreement between The Pittston Company, predecessor-in-interest to Pittston Coal Company, and United Virginia Bank, predecessor-in-interest to Crestar Bank (Trustee), under which all shares of the stock of Gauley have been held by the Trustee. *See* Finance Docket No. 30743, *The Pittston Company—Control Exemption—Buffalo Creek and Gauley R. Co.* (not printed), served February 26, 1986. Accordingly, that voting trust agreement has been dissolved, and the Trustee has reconveyed the involved shares of stock to the Pittston Coal Company. Turner letter, *id.*

[Finance Docket No. 31982]

Butte/Anaconda Historic Park and Railroad Corp.; Acquisition Exemption; State of Montana, Department of Commerce

The Butte/Anaconda Historic Park and Railroad Corporation (BAHP), a non-carrier, has filed a notice of exemption to acquire 11.76 miles of rail line located in Silver Bow County, MT [1] and owned by the State of Montana, Department of Commerce. The main line consists of two segments: (1) The Missoula Gulch line, between milepost 0.00 at Rocker and milepost 4.40, at the Butte Hill Yard; and, (2) the Butte Hill line, between milepost 0.00 at the Butte Hill Yard and milepost 3.69, near the Badger Mine. In addition, there are approximately 3.67 miles of yard tracks, sidings and turnouts. The transaction was expected to be consummated on or before December 6, 1991.[2]

Any comments must be filed with the Commission and served on Rick Griffith, Butte/Anaconda Historic Park and Railroad Corporation, Inc., 305 West Mercury, Butte, MT 59701.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 5, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-3160 Filed 2-10-92; 8:45 am]

BILLING CODE 7035-01-M

[1] As pointed out by BAHP in its verified notice, the entire line is located in a designated Environmental Protection Agency (EPA) superfund site (an area contaminated with hazardous materials as a result of previous mining operations). EPA has assumed the responsibility for the clean-up of the affected properties and, as long as the railroad complies with EPA's clean-up requirements, the Commission is not involved.

[2] BAHP states that, upon consummation, it has in place a trackage rights agreement whereby the Rarus Railway Company will lease and operate the line. As a separate entity, Rarus must obtain the necessary authority to lease and operate the line prior to commencing operations.

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

FY 1992 Discretionary Grant Application Kit

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Public announcement of the availability of the Application Kit for Fiscal Year 1992 Discretionary Grants to be awarded by the Bureau of Justice Assistance prusuant to the Anti-Drug Abuse Act of 1988.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing this Notice of FY 1992 Discretionary Grant Application Kit availability for the interested applicants.

DATES: All proposals responding to the Competitive Section, the Noncompetitive Section, and the Continuation Section of the Application Kit must be postmarked by the specific due dates in the Application Kit for each program.

ADDRESSES: All proposals must be mailed or otherwise sent to: Central Control Desk, Bureau of Justice Assistance, 633 Indiana Avenue, NW., room 1044, Washingotn, DC 20531.

FOR FURTHER INFORMATION CONTACT: Gerald (Jerry) P. Regier Acting Director, Bureau of Justice Assistance, at the above address. Telephone (202) 514-6278. (This is not a toll free number.) To obtain Application Kits, call Bureau of Justice Assistance Clearinghouse 1-800-688-4252 at the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided.

Authority: This action is authorized under Sec. 6091 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4181, 4328, 42 U.S.C. 3742(2).

Background

On December 26, 1991, The Office of Justice Programs, Department of Justice, published a Notice in the **Federal Register**, 56 FR 66877, announcing the FY 1992 Discretionary Program Plans for its component bureaus, including the Program Plan for the Bureau of Justice Assistance. In the Discretionary Grant Application Kit announced herein, the BJA program plan is detailed further, together with application requirements and deadlines. Interested applicants should call the toll-free number at the BJA Clearinghouse (1-800-688-4252) to request a copy of the FY 1992 Discretionary Grant Application Kit.

Gerald (Jerry) P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 92-3200 Filed 2-10-92; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-8891, et al.]

Proposed Exemptions; Amgen Retirement and Savings Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Amgen Retirement and Savings Plan (the Plan) Located in Thousand Oaks, California

[Application No. D-8891]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of its interest in a Guaranteed Income Contract (the GIC) of Mutual Benefit Life Insurance Company (MBL) to Amgen, Inc. (Amgen), a party in interest with respect to the Plan, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GIC at the time of the transaction; (3) the Plan's independent fiduciary, Security Pacific National Bank (SPNB) has determined that the proposed sales price is not less than the current fair market value of the GIC; and (4) SPNB has determined that the proposed transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. Amgen is an international company which develops, manufactures and markets pharmaceuticals based on advanced cellular and molecular biology. The Plan is a qualified stock bonus plan which had 1089 participants as of June 30, 1991. The Plan had assets of approximately $12,963,600 as of that date.

2. Among the options offered to Plan participants from January 1, 1991 through June 30, 1991 was participation in a Guaranteed Income Fund that was invested in the GIC, which was Contract GA-5237 offered by MBL. As of June 30, 1991, 1,052 Plan participants had Plan assets invested in the MBL GIC. The Plan and MBL were the only parties to the GIC. The initial deposit under the GIC was made on January 10, 1991, in the amount of $745,749.24. Subsequent deposits were made semi-monthly until June 30, 1991, when the Plan ceased making payments under the GIC as a result of MBL's legal and financial situation.

3. On July 16, 1991, MBL by court order was placed in conservatorship under the supervision of the New Jersey Commissioner of Insurance. As a result of the conservatorship, all of the assets of MBL have been frozen. The applicant represents that as a result of this development, Amgen questions the ability of MBL to honor its obligations with respect to the GIC.

4. Amgen proposes to protect the vested benefits of the affected Plan participants by purchasing at face value the Plan's investment in the GIC, plus accrued interest at the GIC's guaranteed interest rate of 8.4%. SPNB, the Plan's independent trustee, has determined that the proposed purchase price for the GIC equals or exceeds the current fair market value of the GIC in light of the financial condition of MBL.

5. SPNB represents that it has reviewed MBL's ratings as an insurer and as an issuer of GICs. As of September 30, 1991, A.M. Best Company rated MBL as NA-10, Under State Supervision; Duff & Phelps Credit Rating Company suspended MBL's rating; Moody's Investors Service rated MBL as Caa—Very Poor; and Standard & Poor's Corporation did not even list a rating for MBL. SPNB represents that under these circumstances, it has determined that the proposed sale of the GIC to Amgen is appropriate for the Plan and in the

best interest of the Plan's participants and beneficiaries.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The Plan will receive cash for the GIC in the amount of the face value of the GIC, plus accrued interest, as of the sale date, which SPNB has determined to be equal to or in excess of the fair market value of the GIC; (2) the transaction will enable the Plan to avoid any risk associated with continued holding of the GIC and to redirect assets to safer investments; (3) the Plan will not incur any expenses related to the transaction; and (4) SPNB has determined that the proposed sale of the GIC by the Plan to Amgen at the proposed price is in the best interests of the participants and beneficiaries of the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York

[Exemption Application Nos. D-8649, D-8659, and D-8660]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The reallocation of certain shared real estate investment interests (the Interests) between Equitable and Equitable Variable Life Insurance Company's (EVLICO) General Account and Separate Account Nos. 143 and 174 (the Separate Accounts), single customer accounts established pursuant to a group annuity contract with the International Business Machines (IBM) Retirement Plan (the Plan); (2) the reallocation of the Granite Run mortgage loan (the Granite Run Mortgage) from Equitable's General Account to Separate Account No. 174; and (3) the payments of cash from Equitable's General Account to Separate Account No. 143; provided that: (a) The transactions were on terms and conditions at least as favorable to the Plan as those between unrelated parties; (b) Equitable has not represented the Plan in any way with regard to the transactions; (c) the Plan retained Jackson-Cross to act as independent fiduciary with respect to the transactions; and (d) Jackson-Cross concluded that the transactions were in the best interests of the Plan.

EFFECTIVE DATE: This exemption, if granted, will be effective December 27, 1990.

Summary of Facts and Representations

1. Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. It is the third largest life insurance company in the United States. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management and other services for several thousand employee benefit plans subject to the provisions of Title I of the Act.

Equitable maintains several pooled separate accounts in which pension, profit-sharing, and thrift plans participate. Equitable also has several single customer separate accounts and investment management accounts pursuant to which Equitable manages all or a portion of the assets of a number of large plans. Equitable's real estate investment management subsidiary, Equitable Real Estate Investment Management, Inc. (EREIM), provides real estate investment advisory services to Equitable and property management services with respect to certain properties held by Equitable accounts. EREIM provides real estate investment advisory services to Equitable with respect to the real property assets of Separate Account Nos. 141, 143 and 174.

Equitable has substantial experience in managing real estate investments. Of the more than $61 billion in total assets held by Equitable at year-end 1989, Equitable's General Account held $12.2 billion in real estate mortgage loans and approximately $4 billion in equity investments in real property and interests in real estate joint ventures. Additionally, more than $6 billion of real property investments were held in Equitable's real estate separate accounts.

EVLICO is a wholly owned subsidiary of Equitable. EVLICO sells variable life insurance policies through Equitable agents in 50 states, Puerto Rico, the Virgin Islands and the District of Columbia. As of December 31, 1990, EVLICO had approximately $55 billion face amount of variable life insurance in force.

2. IBM and its subsidiaries and affiliates are the largest manufacturers of data processing equipment machines and systems in the world. As of December 31, 1989, IBM had total assets of $78 billion.

As of December 31, 1989, the Plan had total assets of approximately $22.9 billion. Of this amount, $2.1 billion were held in real estate investments. The named fiduciary of the Plan is the IBM Retirement Plans Committee (the IBM Committee). The IBM Committee is composed of three to five directors of IBM, a majority of whom are outside directors. As named fiduciary of the Plan, the IBM Committee has decided that the Plan should realign its real estate investment holdings and should proceed with the reallocation transaction described herein.

3. Equitable maintains six separate accounts on behalf of the Plan. Three of these accounts, Separate Account Nos. 141, 143 and 174 are the subject of this exemption application. As of December 31, 1989, the net asset value of Separate Account No. 141, which invests in regional shopping malls, was $92.5 million. Separate Account No. 143, which invests in office building complexes, had a net asset value of $485.6 million as of December 31, 1989. As of December 31, 1989, Separate Account No. 174, which holds reallocated investment interests in regional shopping malls, had a net asset value of $577.5 million.

4. On October 3, 1988, the Department published an individual exemption, Prohibited Transaction Exemption (PTE) 88-92 (53 FR 38798), which exempts certain transactions which may occur as a result of the sharing of real estate investments among various accounts maintained by Equitable, including Equitable's General Account, and accounts maintained by Equitable in which employee benefit plans participate, provided that specified conditions are met. The shared investments held in Separate Account Nos. 141 and 143 are held and administered in accordance with PTE 88-92.

On May 3, 1991, the Department published another individual exemption, PTE 91-26 (56 FR 20480), which exempts the transfer of certain interests in four parcels of real property from the General Account to Separate Account No. 143. Among the property interests transferred to Separate Account No. 143 pursuant to PTE 91-26, was a portion of the General Account's interest in International Square in Washington, DC, the First Interstate Bank Tower in Los Angeles, California, and the Corning

Building in New York, New York (described in paragraph 8 below).

5. The applicant represents that one of the original intentions of the Plan in entering into the shared investment relationships described above was to develop the Plan's in-house expertise in real estate investment matters. The Plan's goal was eventually to consolidate these investments and eliminate the sharing of investments with the General Account. The applicant further represents that the Plan has been in the process of reviewing its real estate investment strategy. Based on its review, the Plan has determined to de-emphasize the office building component of its portfolio. The Plan has also decided to expand its holdings of interests in regional shopping malls.

Specifically, the Plan became concerned about the performance of two of the office buildings in Separate Account No. 143, International Square and the First Interstate Bank Tower. The applicant represents that the First Interstate Bank Tower suffered a substantial loss due to a major fire. Due to the relatively poor performance of these two properties and the change in the Plan's investment strategy, IBM instructed Equitable to liquidate the Plan's interest in these properties. The applicant asserts that it was not possible to sell these properties at reasonable prices. Therefore, IBM initiated negotiations with Equitable for the realignment of the equity interests in the two office building properties noted above in exchange for equity interests in other General Account properties currently shared with the Plan. Specifically the transaction would involve the reallocation of the Plan's equity interests in the First Interstate Bank Tower (First Interstate) and International Square to Equitable's General Account and, in exchange, Equitable would reallocate its equity interests in the Corning Building, Granite Run Mall (including the first mortgage), Lindale Mall and Mesa Mall to the Plan's Separate Account. In addition, at the time of the exchange, Equitable would make a payment to the Plan of $14.3 million in cash. The applicant notes that Equitable has not represented the Plan in any way with regard to the reallocation transactions. The applicant represents that Equitable did not recommend that the Plan realign its real estate holdings, and, that the terms of the transaction, including the identification of the properties to be reallocated, have been the subject of arm's-length negotiations between Equitable and IBM.

6. In connection with the transaction subject to this proposed exemption, the Plan retained Jackson-Cross Company (Jackson-Cross) to act as independent fiduciary. Jackson-Cross is a Pennsylvania corporation engaged, directly and through its affiliates, in the business of commercial real estate consulting, brokerage, management, appraisal and related activities. Jackson-Cross has substantial experience in commercial real estate matters, including consulting, real estate brokerage, property management, property appraising and the review and approval of construction budgets. It currently manages approximately 10 million square feet of diverse industrial and commercial properties and office building space.

The Plan chose Jackson-Cross to act as independent fiduciary for the purpose of confirming that the agreed upon values of the Interests were fair and that the reallocation transaction was in the best interest of the Plan. The Plan's selection of Jackson-Cross was based on its past experience with Jackson-Cross, including its role as independent fiduciary under PTE 88–92 for Separate Account No. 143. The applicant represents that Jackson-Cross is independent from Equitable and receives less than 5 percent of its total yearly fees from Equitable and Equitable separate accounts.

7. In a letter dated December 21, 1990, (the Jackson-Cross letter) Jackson-Cross acknowledged its role as independent fiduciary with respect to the reallocation transaction. The Jackson-Cross letter states that Jackson-Cross reviewed the negotiations between the Plan and Equitable prior to the date of the transaction. Charles F. Seymour, Arnold S. Tesh and Dwight E. Wagner of Jackson-Cross serve on the Committee of Fiduciaries (the Committee), which acts as fiduciary for Separate Account Nos. 141 and 143. In connection with its duties as fiduciary, the Committee and/or Jackson-Cross has conducted the following activities:

(a) The members of the Committee have inspected each of the properties involved in the reallocation transaction;

(b) Jackson-Cross has reviewed detailed quarterly reports on all of the assets in Separate Accounts 141 and 143, including operating summaries and the latest quarterly valuations by Equitable's appraisal department;

(c) The Committee meets twice each year with representatives of Equitable and the Plan to review the office and retail portfolios in Separate Accounts 141 and 143;

(d) Mr. Seymour attended a shopping center review August 15, 1989, in which representatives of the property manager and Equitable reviewed in detail plans for the operation, maintenance and development of all the shopping malls, including Lindale and Mesa Malls;

(e) The members of the Committee have participated in numerous meetings and inspections of International Square and are familiar with the need to upgrade these facilities with plans ranging in estimated cost from $7 million to $23 million;

(f) The members of the Committee have participated in numerous meetings about First Interstate Bank Tower, including detailed discussions of the fire, the need for substantial upgrading, and the difficulties of competing in an over built market with small floor plates; and

(g) Jackson-Cross has reviewed Equitable's appraised values on all six of the properties involved in the reallocation transaction on a quarterly basis.

Based on its review of the terms of the reallocation transaction and its continuing role as independent fiduciary, Jackson-Cross concluded that the subject reallocation was in the best interest of the Plan and recommended that it be concluded.

8. The Interests subject to this exemption are described as follows:

(a) International Square

International Square is a 12-story office building located in Washington, DC. The building is owned by a joint venture partnership and is subject to a 99-year ground lease which will expire in 2073. The co-venturer is an entity in which a Washington, DC real estate developer is the majority owner.

International Square is subject to three mortgage loans. The first, which is held by the General Account, had an outstanding balance as of December 31, 1990 of $16.6 million. This loan bears an interest rate of 9 percent and will mature in August 2008. The second, which is also owned by the General Account, bears an interest rate of 8.75 percent, matures in November 2009, and had a balance of $13.3 million as of December 31, 1990. The third loan is held by EVLICO and represents the refinancing of two prior mortgage loans. The EVLICO loan bears an interest rate of 9.8759 percent, matures on June 26, 1992, and had a balance of $46.3 million as of December 26, 1990.

Equitable holds a 50 percent equity interest in the joint venture that owns International Square. Separate Account No. 143 holds 90 percent of Equitable's

equity interest in the joint venture (45 percent of the whole joint venture), with the General Account holding the remaining 10 percent of Equitable's equity interest (5 percent of the total).[1] Equitable and the Plan negotiated a value for Separate Account No. 143's equity interest in International Square of $63.562 million. Separate Account No. 143's equity interest in International Square was transferred to the General Account on December 27, 1990, as part of the reallocation transaction.

(b) First Interstate

First Interstate is an office building complex located in Los Angeles, California. The complex consists of a 62-story office building and a 10-story parking structure. EREIM is the property manager of the First Interstate building. The office building is owned by a joint venture partnership and is subject to a long-term ground lease which will expire in the year 2033 with an additional 20-year option to extend the lease. Equitable holds a 50 percent equity interest in the joint venture. Separate Account No. 143 holds 90 percent of Equitable's equity interest in the joint venture (45 percent of the total), with the General Account holding 10 percent of Equitable's equity interest (5 percent of the total).[2] First Interstate is subject to a $42.5 million mortgage loan from the General Account. The loan bears interest at the rate of 7.875 percent and will mature on October 1, 2008.

Equitable and the Plan negotiated a value for Separate Account No. 143's equity interest in First Interstate of $51.3 million. Separate Account No. 143's entire equity interest in First Interstate was transferred to the General Account on December 27, 1990, as part of the reallocation transaction.

Concurrent with the reallocation transaction, Equitable also negotiated with the Plan an agreement relating to uninsured amounts resulting from the First Interstate fire. Pursuant to this agreement, Equitable has agreed to pay the Plan an additional $16.038 million with respect to these uninsured amounts together with 45 percent of any additional insurance payments which may be received by the joint venture. These amounts are in excess of the $53 million in insurance proceeds already received by the joint venture.

(c) The Corning Building

The Merrill Lynch Financial Center, also known as the Corning building, is a 26-story office building located in New York, New York. The Corning Building and underlying land are owned by Equitable and a university endowment fund as tenants in common. The property is managed by William White-Tishman East Management Company. Equitable is a 50 percent co-tenant in the Corning Building. The General Account currently holds 10 percent of this equity interest (5 percent of the total). Separate Account No. 143 holds 90 percent of Equitable's equity interest (45 percent of the total).[3] The co-owner holds the remaining 50 percent equity interest. There is no financing on the leasehold estate. The General Account's equity interest in the Corning Building was negotiated between Equitable and the Plan as having a value of $9 million. The General Account transferred its entire equity interest in the Corning Building to Separate Account No. 143 on December 27, 1990, as part of the reallocation transaction.

(d) Lindale Mall

Lindale Mall is a shopping mall located in Cedar Rapids, Iowa. Lindale Mall is a one-story mall situated on 68 acres with 458,783 square feet of gross leasable area. The General Account and Separate Account no. 141 each held a 50 percent equity interest in Lindale Mall. There is no outstanding mortgage loan on Lindale Mall. Equitable and the Plan negotiated the value of the General Account's 50 percent equity interest in Lindale Mall at $24.5 million. As part of the reallocation transaction, the General Account transferred its equity interest in Lindale Mall to Separate Account No. 174 on December 27, 1990.[4]

(e) Mesa Mall

Mesa Mall is a shopping mall located in Grand Junction, Colorado. Mesa Mall has 447,572 square feet of gross leasable area, with an additional 72,411 square feet under construction. The General Account and Separate Account No. 141 each hold a 50 percent equity interest in the property. The property is subject to a mortgage loan from an unrelated lender with a current balance of $23.1 million. The Plan and Equitable negotiated a value of the General Account's 50 percent equity interest in Mesa Mall at $8.7 million. As part of the reallocation transaction, the General Account transferred its entire equity interest in Mesa Mall to Separate Account 174 on December 27, 1990.

(f) Granite Run Mall

Granite Run Mall is a shopping mall located in Middletown Township, Pennsylvania. Granite Run is a two-story mall situated on 85.352 acres and has 590,538 square feet of gross leasable space. Equitable holds a 90.5 percent equity interest in the joint venture that owns Granite Run Mall. EVLICO holds the remaining 9.5 percent equity interest. Equitable's equity interest is allocated equally between the General Account and Separate Account No. 141. The property is subject to a mortgage with a current outstanding balance of approximately $18.7 million. The Granite Run Mall Mortgage is held by the General Account. Equitable and the Plan negotiated the value of the General Account and EVLICO's equity interest in Granite Run Mall to be $39 million. The value of the General Account's interest in the Granite Run Mall Mortgage was agreed to be $19.3 million due to the low interest rate of the loan to be assumed by the Separate Account. On December 27, 1990, the General Account and EVLICO transferred their equity interests in Granite Run Mall to Separate Account No. 174, as part of the reallocation transaction. The General Account also transferred its interest in the Granite Run Mall Mortgage to Separate Account No. 174 on December 27, 1990.

In addition to the allocations described in subparagraphs (a) through (f) above, the General Account made a cash payment of $14.362 million to Separate Account No. 143.

The transfer of assets may be summarized as follows: Reallocations to Equitable's General Account:

(1) International square interest	$63,562,000
(2) First interstate interest	51,300,000
Total	114,862,000

Reallocations to the plan's separate accounts:

(1) Corning building interest	9,000,000
(2) Granite Run Mall interest	39,000,000
(3) Lindale Mall interest	24,500,000
(4) Mesa Mall interest	8,700,000
(5) Granite Run first mortgage	19,300,000

[1] The original allocation of the interests in International Square between the General Account and Separate Account No. 143 was made pursuant to PTE 91-26, as noted in paragraph 4. The applicant represents that the original allocation price of this interest to Separate Account No. 143 was $59.2 million.

[2] The original allocation of the interests in First Interstate between the General Account and Separate Account No. 143 was made pursuant to PTE 91-26, as noted in paragraph 4. The applicant represents that the original value of this interest was $60.3 million.

[3] The original allocation of the interests in the Corning Building between the General Account and Separate Account No. 143 was made pursuant to PTE 91-26, as noted in paragraph 4.

[4] The applicant represents that, for ease of administration, the Plan's interests in Lindale Mall, Mesa Mall and Granite Run Mall were reallocated from Separate Account No. 141 to Separate Account No. 174.

(6) Cash	14,362,000
Total	114,862,000

9. In summary, the applicant represents that the proposed exemption meets the criteria of section 408(a) of the Act because: (a) The terms of the transactions were negotiated at arm's-length; (b) Equitable has not represented the Plan in any way with regard to the transactions; (c) the Plan retained Jackson-Cross to act as independent fiduciary with respect to the transactions; and (d) Jackson-Cross concluded that the transactions were in the best interests of the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Anderson of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Combs & Associates Inc. Retirement Plan and Trust (the Pension Plan) and Combs & Associates Inc. Profit Sharing Plan and Trust (the P/S Plan, collectively the Plans) Located in Charlotte, NC

[Application Nos. D-8830 and D-8831]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plans of certain parcels of unimproved real property (the Parcels) to Anthony R. Combs and his wife, Karen C. Combs (Mr. and Mrs. Combs), parties in interest with respect to the Plans; provided that the terms of the transaction are no less favorable to the Plans than those negotiated in similar transactions at arms' length with unrelated third parties; and provided further that the sales price is the greater of the total cost to the Plans of acquiring those Parcels or the fair market value of such Parcels on the date of the sale, as determined by an independent qualified appraiser.[5]

Summary of Facts and Representations

1. The Plans are a defined benefit plan and a defined contribution plan which were established by Combs & Associates, Inc. (the Employer) in 1982 and 1987, respectively. As of September 9, 1991, the Pension Plan and the P/S Plan had four (4) and eight (8) participants, respectively. On June 30, 1991, the Pension Plan and the P/S Plan had assets of approximately $236,739 and $110,485, respectively. It is represented that the Parcels involved in the proposed transaction constitute 15.4% and 11.3%, respectively, of the assets of the Pension Plan and the P/S Plan.

In 1987, the Employer also established a Money Purchase Pension Plan (the M/P Plan) for its employees. In 1990, the M/P Plan had assets of $61,928, and in 1991 the M/P Plan had eight (8) participants. The M/P Plan is not involved in the proposed transaction but at one time owned real property adjoining the Parcels.

2. Mr. and Mrs. Combs, sole shareholders of the Employer, are participants in the Plans and serve as administrators and co-trustees of the Plans. As such, both Mr. and Mrs. Combs exercise investment discretion with respect to the Plans, and are fidiciaries and parties in interest with respect to the Plans. Mr. Combs also serves as president of the Employer.

3. The Employer was incorporated on June 29, 1979, under the laws of South Carolina, but is licensed to do business in North Carolina. The Employer provides equipment and consulting services for companies engaged in the water and waste water treatment business. As of June 30, 1990, the Employer had seventeen (17) employees.

4. The Parcels which are the subject of this proposed exemption consists of six lots (Lots #1, #8, #9, #10, #13, and #14) out of fourteen adjacent lots (collectively, the Lots). All the Lots are numbered consecutively in the Mecklenburg County records as tax parcels 078-094-01 through 078-094-14. It is represented that the Lots are unencumbered and are located near to downtown Charlotte, North Carolina. The aggregate square footage of all fourteen Lots (2.94 acres) makes up an entire city block. This block is located across the street from the Employer's offices and warehouses and is bounded by North Tryon Street, West Liddle Street, North Church Street, and the right of way for the Seaboard/Chessie Railroad. All the Lots are zoned general industrial and are unimproved, except that a brick retaining wall exists on the North Tryon Street border and a sidewalk and six foot high chain link fence surrounds the perimeter of the Lots. It is represented that the Lots front on major thoroughfares and have access to public utilities.

5. It is represented that the Employer for investment purposes, in 1983 purchased from unrelated third parties Lot #2, and Lots #4 through #12. In December of 1986, the Pension Plan acquired from unrelated third parties Lots #1, #13, and #14 at a price of $80,500. After the purchase in 1988 of Lot #3 by the Employer from unrelated third parties, the owner of each of the fourteen Lots was either the Employer or the Pension Plan.

On March 15, 1989, upon advice of its counsel and the advice of its actuarial and employee benefit consulting firm, the Employer entered into three transactions. First, in satisfaction of it's yearly funding obligation, the Employer contributed in kind to the M/P Plan Lots #11 and #12, valued at $18,913 by an independent qualified appraiser. It is represented that following this transaction the M/P Plan had assets of $20,565 of which approximately 92% was attributable to the contribution in kind.

Second, the Employer made a discretionary contribution in kind to the P/S Plan of Lots #8 through #10, valued by the same appraiser at $24,589. Following the contribution of this property, the P/S Plan had total assets of $27,912 of which approximately 88% was attributable to the contribution in kind.

Third, the Employer sold Lots #2 through #7 to the Pension Plan at the fair market value of $88,602, as determined by the same appraiser. At the time this purchase was executed the Pension Plan had assets of $347,530 of which approximately 25% was involved in the purchase by the Pension Plan.

After these three transactions were concluded, the owner of each of the fourteen Lots was either the Pension Plan, the P/S Plan, or the M/P Plan. It is represented that the Lots have not been used by parties in interest for any purpose.

In April 1989, shortly after these three transactions were completed, the Employer received a letter from the legal department of their employee benefit consulting firm advising of potential problems with these transactions under the Act. After receiving this letter Mrs. Combs sought further clarification and obtained in writing an opinion from the same consulting firm that these transactions did not violate the provisions of the Act or the Code.

Thereafter, in December of 1990, the Employer retained a new employee benefit consulting firm. After reviewing the records and plan documents, the new employee benefit consulting firm

[5] For purposes of this proposed exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

advised the Employer of possible prohibited transactions in connection with the contribution in kind to the M/P Plan and the sale to the Pension Plan of the various Lots. With respect to two of these transactions, those involving the Pension Plan and the M/P Plan, the Employer represents that it has filed Form 5330 with the Internal Revenue Service (IRS), and has paid excise taxes due for taxable years 1988, 1989, and 1990. The Employeralso represents that it has corrected these two transactions by purchasing Lots #11 and #12 from the M/P Plan and Lots #2 through #7 from the Pension Plan at a price which was the greater of cost or the fair market value of such lots, as determined on June 4, 1991, by a qualified independent appraiser.[6]

6. Six Parcels still remain in the Plans. These six Parcels consist of Lots #8 through #10, which were previously contributed by the Employer to the P/S Plan, and Lots #1, #13, and #14 acquired by the Pension Plan from unrelated third parties. In their application, Mr. and Mrs. Combs seek prospective exemptive relief in order to purchase for cash these six Parcels still remaining in the Plans. Mr. and Mrs. Combs will be responsible for closing costs associated with the proposed transaction, including the cost of the appraisal, all legal fees, recording fees, surveying, and other expenses connected with the sale. It is further represented that Mr. and Mrs. Combs will bear the cost of the exemption application and of notifying interested persons.

It is represented that the value of the six Parcels has declined since they were acquired by the Plans.[7] Accordingly, Mr. and Mrs. Combs propose to purchase the six Parcels for a price equal to the greater of the fair market value of the Parcels on the date of the sale, as determined by an independent qualified appraiser, or the total cost of $106,589 ($82,000 and $24,589, respectively, to the Pension Plan and the P/S Plan) in acquiring the Parcels.[8] It is represented that all taxes and other out-of-pocket expenses of holding the six Parcels have been paid by the Employer.

7. Thomas B. Harris, Jr., MAI, (Mr. Harris) and John T. Bosworth, SRA, (Mr. Bosworth), of T.B. Harris, Jr. & Associates in Charlotte, NC, serve as the qualified independent appraisers of the six Parcels. Both Mr. Harris and Mr. Bosworth are independent in that they have no prospective interest in the Parcels, nor any present interest or bias with respect to the parties involved. Mr. Harris is qualified as an MAI, is a member of the Society of Real Estate Appraisers, and is certified by the state of North Carolina as a general real estate appraiser. Mr. Bosworth has earned the designation Senior Residential Appraiser (SRA) and is an approved course instructor for residental and general appraisal programs.

Mr. Harris and Mr. Bosworth together prepared two appraisals dated January 15, 1990, and June 4, 1991, respectively. The application also contains an update, as of August 12, 1991, of the value of the six Parcels. According to Mr. Harris and Mr. Bosworth, Lots #1, #13, and #14 collectively were worth $48,300 on the date of the first appraisal and $36,618 as of the update. Lots #8 through #10 collectively were valued at $14,950 on the date of the first appraisal and $12,515 as of the update. The total fair market value of the six Parcels calculated by Mr. Harris and Mr. Bosworth, as of the date of the update on August 12, 1991, was $49,133.

8. Because of the proximity of the Parcels to each other and to the Employer's facilities, the appraisers were asked to address whether the Parcels have a higher "assemblage" value to the Employer, as the owner of adjacent lots, than they would have to an unrelated third party purchaser. Accordingly, the appraisers supplemented the information contained in their previous two appraisals and in the update. In a letter dated December 20, 1991, Mr. Bosworth indicated that the appraised value of the Parcels did contemplate "assemblages" of two or more lots, because each of the Parcels is insufficient in size to contain an industrial improvement and is therefore unmarketable. However, in the opinion of Mr. Bosworth, a premium for the "assemblage" value of more than two of the Parcels is not justified under the circumstances, because: (a) The optimium size of a tract in this neighborhood is speculative, as the neighborhood has yet to mature for industrial use; (b) the location is stagnant in terms of development; (c) the improvements in the surrounding areas are unappealing; (d) the current real estate market is not conducive to industrial development; and (e) there is a relatively high crime rate in the neighborhood in which these Parcels are located.

The applicants represent that given the current economic conditions and the lack of development in the neighborhood that finding a third party purchaser for the six Parcels is not likely. Accordingly, the sale of the Parcels by the Plans to Mr. and Mrs. Combs provides an opportunity for the Plans to dispose of a rapidly depreciating asset and will prevent significant loss to the Plans and the participants and beneficiaries. It is represented that the sale is feasible in that it involves a one-time transaction for cash. In addition, it will be in the interest of the Plans to invest the cash proceeds from the sale of the six Parcels in more profitable assets.

9. In summary, Mr. and Mrs. Combs, as applicants, represent that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale of the six Parcels by the Plans is a one time transaction for cash;

(b) The Plans will be able to invest the proceeds from the sale of the six Parcels in more profitable assets;

(c) The Plans will receive the greater of the cost to the Plan to acquire the six Parcels or the fair market value on the date of sale, as determined by a qualified independent appraiser; and

(d) The Plans will incur no costs, fees, or other expenses as a result of the sale of the six Parcels.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number).

[6] In this regard, the Employer states that Advisory Opinion 90-05A (March 29, 1990) is applicable to the transaction involving the P/S Plan. This opinion held that a prohibited transaction did not arise from the voluntary contribution of unencumbered real property by an employer to a profit sharing plan. The Employer represents that the P/S Plan is funded at the sole discretion of the Employer and that the in kind contribution of Lots #8 through #10 did not relieve the Employer of any obligation to make a cash contribution to the P/S Plan; and therefore, did not violate section 406(a)(1)(A) through (D) or 406(b)(1) or (b)(2) of the Act. Accordingly, when the Employer filed Form 5330 and paid excise tax it did so only with respect to the transactions involving the Pension Plan and the M/P Plan. The Department expresses no opinion, and no exemptive relief is proposed herein with respect to any transaction involving the purchase, sale, or contribution of any of the Lots between the Employer and the Plans or the holding of the Lots by any of the Plans. Rather the proposed exemption is limited solely to that exemptive relief necessary to enable the Plans to dispose of their interests in the Parcels.

[7] The Department is providing no opinion as to whether the continued holding of any of the Lots by the Plans while the value declined violated any provision of part 4 of title I of the Act.

[8] It is represented that the proposed purchase of the Parcels by Mr. and Mrs. Combs will not cause the Pension Plan or the P/S Plan to exceed the limitations of section 415. It is further represented that the allocation to the Pension Plan or to the P/S Plan of any gain on the sale of the Parcels will not violate the discrimination provisions of section 401(a)(4) of the Code.

S.T.L.B. Inc. Profit Sharing Plan (the Plan) Located in South San Francisco, California

[Application No. D–8795]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply for a period of five years to a series of loans from the Plan to S.T.L.B. Inc. (the Employer) and to a personal guarantee of the loans by parties in interest with respect to the Plan, provided that the following conditions are met:

1. The terms of the loans are at least as favorable as the Plan could obtain in arm's-length transactions with an unrelated party;

2. The outstanding principal balances of the loans in the aggregate do not at any time exceed 25 percent of the assets of the Plan;

3. Each loan will be for the purchase of a new vehicle on which there is no other encumbrance;

4. Each loan will be limited to a maximum of $5,000;

5. A fiduciary independent of the Employer will approve and monitor each loan on behalf of the Plan and will see that all the terms of the notes and the exemption are met;

6. Each loan will be for a period of no more than 36 months;

7. The value of the collateral for each loan will be maintained at no less than 200 percent of the balance of the loan;

8. The controlling owners of the Employer will personally guarantee all the payments due on the loans;

9. The Employer will maintain an appropriate bond with the California Department of Motor Vehicles in regard to public liability and property damage on each collateralized automobile;

10. The Employer will immediately pay to the Plan the outstanding balance of the loan on any automobile which is traded or sold or significantly damaged or destroyed;

11. The interest rate on each loan will be two percent above the prime rate as posted each month by Security Pacific National Bank; and

12. The title to each collateralized automobile will be held in the name of the Plan.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant. However, any loan made to the Employer pursuant to the proposed exemption may continue to its maturity date provided the loan was entered into during the five-year period.

Summary of Facts and Representations

1. The Employer is engaged in the automobile rental business and as a result must purchase new automobiles annually. The Plan is a profit sharing plan which had 24 participants and total assets of approximately $1,050,000 as of April 30, 1991.

2. The Employer obtained a previous prohibited transaction exemption (PTE 83–146, 48 FR 41660, September 16, 1983) which permitted its sponsored defined benefit plan to make a series of loans to the Employer for a period of eight years for the purpose of financing the purchases of new automobiles. That plan terminated on September 30, 1991, and its assets will be transferred to the Plan at some later time. Any outstanding loans from the previous plan exempt under PTE 83–146 will be paid off by the Employer prior to the transfer of assets. The applicant represents that all the terms and conditions of PTE 83–146 have been met and that all loan payments thereunder were received by the previous plan timely and in full.

3. The applicant now requests a temporary exemption for a period of five years to make a series of similar loans from the Plan to the Employer. All such loans will be for the purchase of new vehicles upon which has been placed no other encumbrance. Each loan will be limited to a maximum of $5,000, approximately half of the price of one of the new automobiles purchased by the Employer. In the aggregate, the loans will at no time account for more than 25 percent of Plan assets. Each loan under the requested exemption will be collateralized by a promissory note and a security agreement on the automobile being financed. The loan will create a first lien and the only lien on the vehicle. The title to all collateralized automobiles will be held in the name of the Plan. The loans will be repaid on a monthly basis with equal payments of principal and interest. The interest rate on the loans will be two percent above the prime rate as posted each month by Security Pacific National Bank.

4. Each loan will be for a period of no more than 36 months. The value of the collateral for each loan will be maintained at no less than 200 percent of the balance of the loan throughout the term of the loan. If any collateralized automobile is traded or sold or is significantly damaged or destroyed, the Employer will immediately pay the outstanding balance of the loan to the Plan. Robert and Vivian Leech, officers and controlling owners of the Employer, will personally guarantee all loans made under the proposed exemption as to both principal and interest and any payoff due to damaged or destroyed vehicles. The applicant represents that these individuals have sufficient net worth to make good on this guarantee.

The Employer is currently self-insuring its fleet of automobiles against collision and comprehensive damages, which the applicant represents is customary for the industry. In this regard, the applicant notes that the Employer had retained earnings of over $1.3 million as of December 31, 1990. The Employer will keep the subject automobiles in three separate locations in order to avoid any catastrophic losses. Also, the Employer maintains a bond with the California Department of Motor Vehicles in connection with public liability and property damage for the stated liability limits required by the State. Such policies will name the Plan as an additional insured loss payee.

5. The Plan received a letter from the San Bruno, California, office of the First National Bank (the Bank) dated September 5, 1991, concerning the requested exemption. The Bank represents that it is independent of the Employer and that the deposits of the Employer account for under one percent of the assets of the Bank. In the letter, the Bank states that it has reviewed the terms of the proposed loans and would be willing to make the same loans on the same terms.

6. Arthur H. Bredenbeck (Bredenbeck), an attorney in Burlingame, California, will serve as independent fiduciary in regard to the proposed transactions. The applicant represents that Bredenbeck is unrelated to the Employer except for serving as the independent fiduciary for PTE 83–146. Bredenbeck has specialized for several years in tax and estate and financial planning with special emphasis in the area of retirement plans. Bredenbeck states that he understands the meaning of being a fiduciary under the Act and that he is willing to assume the liability related to the transactions described in the application. As independent fiduciary, Bredenbeck has examined the asset portfolio of the Plan as to propriety and diversification and believes that the proposed loans will increase the yield on that portfolio without significantly affecting liquidity or availability of assets to pay benefits.

Bredenbeck will approve and monitor each loan on behalf of the Plan and will require that legal title to each collateralized automobile be held in the name of the Plan. He will see that all loan payments are received by the Plan timely and in full and at the appropriate rate of interest.

Bredenbeck will see that the collateral is maintained at no less than 200 percent of the balance of each loan. If at any time the collateral is not sufficient, Bredenbeck will take any action he deems necessary in order to bring the collateral up to 200 percent. The collateral will be valued annually using the published Blue Book valuation of a particular automobile for each year. Bredenbeck will assure that the Employer immediately pays to the Plan the outstanding balance of the loan on any automobile which is significantly damaged or destroyed. If Bredenbeck determines that a material default has occurred on a loan, he will take whatever steps he considers necessary in order to protect the interests of the Plan. Bredenbeck will file with the Plan on an annual basis a statement that all the terms of the notes and the exemption are being met.

7. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (1) An independent fiduciary has determined that the proposed loans are in the best interests of the Plan; (2) all loans will be for the purchase of new automobiles on which there is no other encumbrance; (3) each loan will be approved and monitored by the independent fiduciary on behalf of the Plan; (4) the outstanding principal balances of the loans in the aggregate will not at any time exceed 25 percent of the assets of the Plan; and (5) the controlling owners of the Employer will personally guarantee all the payments due on the loans to the Plan.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 5th day of February, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–3217 Filed 2–10–92; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 92–7; Exemption Application No. D–8470, et al.]

Grant of Individual Exemptions; FDC Profit Sharing Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

FDC Profit Sharing Trust (the Plan) Located in Temple, Texas

[Prohibited Transaction Exemption 92–7; Exemption Application No. D–8470]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) shall not apply to the sale by the Plan of

undeveloped real property to Mr. Robert C. Jones, a party in interest with respect to the Plan provided that the Plan receives the greater of $40,000 or the fair market value of the property at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 12, 1991 at 56 FR 64810.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department of Labor, telephone (202) 523-8971. (This is not a toll-free number.)

ASC, Inc. Individual Deferred Earnings Accounts Savings Plan (the Plan) Located in Southgate, Michigan

[Prohibited Transaction Exemption 92-8; Exemption Application No. D-8857]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the following transactions:

(1) Interest-free extensions of credit to the Plan (the Advances) by ASC Incorporated (ASC), the sponsor of the Plan, with respect to a group annuity contract (the GAC) issued by the Mutual Benefit Insurance Company of Newark, New Jersey (Mutual Benefit); provided that (a) no interest and/or expenses are paid by the Plan; (b) the proceeds of the Advances are used only in lieu of payments due from Mutual Benefit with respect to the GAC; and (c) repayment of the Advances will be restricted to proceeds from the proposed sale of the GAC to ASC; and

(2) The sale of the GAC by the Plan to ASC; provided that the purchase price for the GAC equals or exceeds the fair market value of the GAC as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 12, 1991 at 56 FR 64813.

EFFECTIVE DATE: This exemption is effective as of September 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Asarco, Incorporated (Asarco) Located in New York, New York

[Prohibited Transaction Exemption 92-9; Exemption Application No. D-8869]

Exemption

The restrictions of sections 406 (a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the assignment by the Savings Plan of Asarco Incorporated and Participating Subsidiaries (the Plan) of the Plan's interest in a guaranteed investment contract (the E.L. GIC) issued by Executive Life Insurance Company of California (Executive Life) to Asarco, the sponsor of the Plan, in exchange for certain payments by Asarco to the Plan; provided that (1) all the terms of such transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party, (2) the Plan's liability to Asarco resulting from such assignment will in no event exceed the amounts actually received from Executive Life, state guaranty funds and other responsible third parties, and (3) the assignment and transfer of amounts to Asarco will not exceed the total amount transferred by Asarco to the Plan with respect to the E.L. GIC, plus any interest which may accrue on such amounts determined at the Blended Rate following December 31, 1991, but prior to its final disposition.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 12, 1991 at 56 FR 64811.

EFFECTIVE DATE: This exemption is effective as of December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of February, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-3218 Filed 2-10-92; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-8303]

Amendment to Prohibited Transaction Exemption (PTE) 77-7 Involving the Transfer of Individual Life Insurance and Annuity Contracts to Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Adoption of amendment to PTE 77-7, and redesignation as PTE 92-5.

SUMMARY This document amends PTE 77-7, a class exemption that permits the transfer of certain individual insurance or annuity contracts to employee benefit plans by plan participants or by employers, any of whose employees participate in such plans, provided specified conditions are met. The amendment affects, among others, certain participants, beneficiaries and fiduciaries of plans engaged in the described transactions.

EFFECTIVE DATE The amendment to PTE 77-7 is effective as of October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Eric Berger of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 523-8971 (this is not a toll-free number); or Diane Pedulla of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523-9597. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 11, 1991, notice was published in the **Federal Register** (56 FR 31681) of the pendency before the Department of a proposed amendment to PTE 77–7 (42 FR 31575, June 21, 1977). PTE 77–7 provides an exemption from the restrictions of section 406(a) and 406(b)(1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code.

The amendment to PTE 77–7 adopted by this notice was requested in an exemption application dated August 16, 1989, by the American Council of Life Insurance.[1] The exemption application was submitted pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code [2] and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

The notice of pendency gave interested persons an opportunity to comment on the proposed amendment. Public comments were received pursuant to the provisions of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

For the sake of convenience, the entire text of PTE 77–7, as amended, has been reprinted with this notice. The Department has redesignated the exemption as PTE 92–5.

Description of the Exemption

PTE 77–7 permits the transfer of certain individual insurance or annuity contracts to employee benefit plans by plan participants or by employers, any of whose employees participate in the plan, provided certain conditions are met. As of the date PTE 77–7 was granted, section 408 (d) of the Act provided that no exemption could be granted under section 408(a) of the Act for transactions of the type described in the exemption between a plan and certain persons such as an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) or a shareholder-employee (as defined in section 1379 of the Internal Revenue Code of 1954). The exemption is, however, applicable to such persons for purposes of section 4975 of the Code.

The amendment to PTE 77–7 granted pursuant to this notice expands the coverage of the exemption to include transactions with owner-employees (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) and shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982).

The Department notes that all the conditions contained in PTE 77–7 still must be met under the amendment. These conditions include a requirement that, the plan pay, transfer, or otherwise exchange no more than the lesser of (a) the cash surrender value of the contract; (b) if the plan is a defined benefit plan, the value of the participant's accrued benefit at the time of the transaction (determined under any reasonable method); or (c) if the plan is a defined contribution plan, the value of the participant's account balance. Additionally, the exemption requires that, with regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to the subject sale, transfer, or exchange, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

Written Comments

The Department received three letters supporting the proposed amendment to PTE 77–7.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of the participants and beneficiaries of plans;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The amendment is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, PTE 77–7 is amended under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1, as set forth below.

I. Effective January 1, 1975, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale, transfer, or exchange of an individual life insurance or annuity contract to an employee benefit plan from a plan participant on whose life the contract was issued, or from an employer, any of whose employees are covered by the plan, if:

1. The plan pays, transfers, or otherwise exchanges no more than the lesser of—

(a) The cash surrender value of the contract;

(b) If the plan is a defined benefit plan, the value of the participant's accrued benefit at the time of the transaction (determined under any reasonable method); or

(c) If the plan is a defined contribution plan, the value of the participant's account balance.

2. Such sale, transfer, or exchange does not involve any contract which is subject to a mortgage or similar lien which the plan assumes.

3. Such sale, transfer, or exchange does not contravene any provision of the plan or trust document.

4. With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, transfer, or exchange, discriminate in form or in operation in favor of plan participants who are officers,

---

[1] The applicant also requested, and the Department is publishing elsewhere in this issue of the **Federal Register**, a similar amendment to PTE 77–8 (42 FR 31574, June 21, 1977).

[2] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

shareholders, or highly compensated employees.

II. Effective October 22, 1986, the exemption provided for transactions described in part I is available for plan participants who are owner-employees (as defined in section 401(c)(3) of the Internal Revenue Code of 1986) or shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982) if the conditions set forth in part I are met.

Signed at Washington, DC, this 3rd day of February, 1992.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-3216 Filed 2-10-92; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Individual Participant Rights of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m., Monday March 2, 1992, in suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Individual Participant Rights Working Group was formed by the Advisory Council to study issues relating to Individual Participant Rights for employee benefit plans covered by ERISA.

The purpose of the March 2 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before February 26, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before February 26, 1992.

Signed at Washington, DC, this 5th day of February, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-3186 Filed 2-10-92; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Health Care of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11:30 a.m., Monday, March 2, 1992, in suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Health Care Working Group was formed by the Advisory Council to study issues relating to Health Care for employee benefit plans covered by ERISA.

The purpose of the March 2 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before February 26, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before February 26, 1992.

Signed at Washington, DC, this 5th day of February, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-3187 Filed 2-10-92; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Pension Investment Activity of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., Tuesday March 3, 1992, in suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Pension Investment Activity Working Group was formed by the Advisory Council to study issues relating to Pension Investment Activity for employee benefit plans covered by ERISA.

The purpose of the March 3 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before February 26, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before February 26, 1992.

Signed at Washington, DC, this 5th day of February, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-3188 Filed 2-10-92; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Pension Coverage and Adequacy of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 2 p.m., Monday, March 2, 1992, in suite S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Pension Coverage and Adequacy Working Group was formed by the Advisory Council to study issues relating to Pension Coverage and Adequacy for employee benefit plans covered by ERISA.

The purpose of the March 2 meeting is to develop the Working Group's specific agenda for presentation to and approval by the Advisory Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before February 26, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before February 26, 1992.

Signed at Washington, DC, this 5th day of February, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92–3189 Filed 2–10–92; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Tuesday, March 3, 1992, in suite S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

The purpose of the Seventy-Third meeting of the Secretary's ERISA Advisory Council which will begin at 12:30 p.m., is to review and provide input as to the desired scope and agenda being prepared by each of the Council's work group i.e., Individual Participant Rights; Health Care; Pension Investment Activity; Pension Coverage & Adequacy, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before February 27, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before February 27, 1992.

Signed at Washington, DC, this 5th day of February, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92–3190 Filed 2–10–92; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: January 30, 1992

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NSCUA, Administrative Office, room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133–0004.
Form Number: NCUA 5300.
Type of Review: Revision of a currently approved collection.
Title: Semiannual Financial and Statistical Report.
Description: Provide information on credit unions necessary for supervisory purposes, internal management, policy and regulatory decisions and research.
Respondents: Federally-insured credit union.
Estimated Number of Respondents: 12,550.
Estimated Burden Hours per Response: 8.0 hours.
Frequency of Response: Quarterly and semiannually.
Estimated Total Reporting Burden: 215,200 hours.
Clearance Officer: Wilmer A. Theard, (202) 682–9700, National Credit Union Administration, room 7344, 1776 G Street, NW, Washington, DC 20456.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secreary of the NCUA Board.

[FR Doc. 92–3126 Filed 2–10–92; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Michigan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission and the State of Michigan. The Memorandum of Understanding provides the basis for mutually agreeable procedures whereby the Michigan Department of State Police may utilize the NRC Emergency Response Data System to receive data during an emergency at a commercial nuclear power plant in the State of Michigan.

EFFECTIVE DATE: This Memorandum of Understanding is effective immediately.

ADDRESSEES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

For Further Information Contact: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

SUPPLEMENTARY INFORMATION: Section 274i. of the Atomic Energy Act of 1954, as amended allows the U.S. Nuclear Regulatory Commission (Commission or NRC) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." A section 274i. agreement, typically in the form of a Memorandum of Understanding (MOU), differs from an agreement between NRC and a State under the "Agreement State" program; the latter is accomplished only by entering into an agreement under section 274b. of the Atomic Energy Act. A State can enter into a section 274i. MOU whether or not it has a section 274b. agreement.

Background

As a result of the accident at Three Mile Island, Unit 2, on March 28, 1979, the Nuclear Regulatory Commission (NRC) and others recognized a need to improve the NRC's ability to acquire accurate and timely data on plant conditions during emergencies. The Emergency Response Data System (ERDS) has been developed to respond to this need. ERDS is a direct computer link between licensee computers at commercial nuclear power plants and computers at the NRC Operations Center at Bethesda, Maryland. The system allows for direct electronic transmission of a limited set of data points from the licensee computers to ERDS. Data transmitted over ERDS provides information concerning (1) core and coolant system conditions, needed to assess the extent or likelihood of core damage, (2) conditions inside the containment building, needed to assess the likelihood and consequences of containment failure, (3) radioactivity release rates, needed to assess the immediacy and degree of public danager, and (4) data from the plant meteorological tower, needed to assess the likely patterns of potential or actual impact on the public.

The ERDS design provides for access to ERDS data by State governments which have jurisdiction over any area which falls within the 10–mile plume exposure Emergency Planning Zone around each nuclear power plant.

On May 7, 1991 (56 FR 21178), the NRC published a proposed MOU between the NRC and the State of Michigan. The MOU defines the manner in which the NRC and the State of Michigan will cooperate in planning and maintaining the capability to transfer data relating to plant conditions during emergencies at nuclear power plants located in Michigan through ERDS.

Public Comments

Interested parties were invited to submit comments on the proposed MOU. Comments were received from five State governments and the Federal Emergency Management Agency. Comments received on the proposed MOU were docketed and may be examined at the Commission's Public Document Room located at 2120 L Street NW (Lower Level), Washington, DC. Upon consideration and disposition of comments received as set forth below, the Nuclear Regulatory Commission has entered into the Memorandum of Understanding with the State of Michigan without modification. Although some comments received may provide the basis for discussion of potential modification in the standard MOU on a State by State basis, no cause was found in the comments to modify the MOU in question prior to issuance.

Analysis of Public Comments

1. *Comment.* In the case of nuclear power plants which lie within ten miles of a State border, will the NRC transmit ERDS data to bordering States which include a portion of the ten mile Emergency Planning Zone.

Response. The ERDS can be configured to send data to all States which are included within the ten mile plume exposure emergency planning zone around a nuclear power plant.

2. *Comment.* Two States commented on Section III D. (5). One State while recognizing that the States do not have the regulatory authority to direct or recommend licensees to take or not take an action, noted that State governments are not precluded from making recommendations and suggestions to the licensee in the interest of consequence mitigation protective action recommendations, and other issues of great interest to the State. Another State commented that they believed that NRC intends that State authorities not make technical recommendations with regard to plant recovery from an accident, but did not intend to restrict the ability of a State to coordinate activities with utility responders during nuclear emergencies to effect the maximum use of limited resources.

Response. While the State does have an interest in the areas of consequence mitigation and protective action mitigation, entering into a Memorandum of Understanding with the NRC to receive ERDS data does not confer upon the State the ability to direct the licensee to take any action. The NRC agrees with the second comment concerning this section of the MOU.

3. *Comment.* It is possible that a State may require more than one ERDS terminal, located at difference facilities at difference times during a response to a nuclear accident.

Response. There is no limit to the number of ERDS terminals that a State may install. The only limit is that only one terminal per State may access ERDS at any one time. This limitation is a hardware limitation based on the number of communication ports available for State access on the ERDS computers.

4. *Comment.* One State commented that they looked to ERDS to correct widespread and long standing difficulties in acquiring information on plant parameters in the early stages of exercises and accidents. If through the MOU, the State were required to surrender a right to all voice communications with the licensee related to ERDS, and be required to converse with the utility only through NRC Liaison or the Region or Headquarters, they would be entertaining errors and delays.

Response. This provision was placed in the MOU to mitigate a potential adverse impact on licensee accident response due to ERDS data transfer. ERDS is an NRC system, therfore, it is appropriate that NRC bear the burden of responding to questions about ERDS data. Note that the restriction on the State is against questioning plant operators about ERDS data. This does not preclude the normal discussion of plant conditions with emergency response personnel when the licensee emergency response facilities are activated. Another State noted that one of the strengths of the MOU as written was that it does an excellent job of preventing State personnel from distracting the plant operator in his duties to recover from the emergency.

5. *Comment.* One State commented that the State already has access to plant data at the licensee's emergency response facilities and that access to data by personnel outside the

emergency response facilities would not contribute to the State's emergency response because the officials with the technical expertise to properly analyze the ERDS data will be at the licensee's emergency response facilities. This could potentially result in a conflict between the assessment of the plant conditions between the on-site State officials and those with access to ERDS data.

Response. ERDS data transfer is intended to be used at States that request it to provide plant parameter data to State Incident Response Centers at which event assessment is conducted. This process takes place at various places depending on the State in question. It is not recommended that States subscribe to ERDS just for the purpose of having it. The ERDS may be of value at the location where the State government conducts its assessment of reactor conditions. If this occurs at the licensee's emergency response facilities, ERDS would be of little value because plant data is readily available.

6. *Comment.* One State commented that since ERDS includes radiological and meteorological data, the system would also be very beneficial to those States responsible for ingestion pathway protection actions and recommended the ERDS be made available to all States in the 50-mile ingestion pathway emergency planning zone (EPZ).

Response. While there is data available on ERDS which could possibly be of use to States within the 50-mile EPZ, as noted earlier, system constraints require that the numbers of users on the system be limited to preclude excessive demand for communication ports on the computer. Because access to the system is by dial up telephone line, access is necessarily first come first served. The decision to limit ERDS data to the States within the ten mile EPZ was based on the immediacy of the need for data to those responsible for protective actions close in during an emergency.

It is recognized that there is need for event consequence data in the ingestion pathway EPZ, however, there is sufficient time to allow the use of other methods of data transfer for this purpose.

7. *Comment.* One State noted that since emergencies require prompt significant interaction with the public, it is unclear what is intended by the Section VI.C restrictions against premature public release of sensitive information.

Response. It is important to note that while ERDS represents a significant increase in the information available to Federal and State authorities during an accident, it does not augment the quality or quantity of information available to the licensee at the site. ERDS presents one of many information paths throughout the plant. The data presented is directly transmitted from the licensee computer to the NRC computer, and therefore, has not been analyzed or verfied. It is important that ERDS data and assessments based on ERDS data not be directly transmitted to the public or the media until it has been properly verified. Again, the responsibilities of the various parties involved in an emergency at a nuclear power plant are not intended to be changed based on the existence of ERDS. The licensee still bears the primary responsibility for accident assessment and mitigation.

This Memorandum of Understanding (Attachment 1) is intended to formalize and define the manner in which the NRC will cooperated with the State of Michigan to provide data related to plant conditions during emergencies at commercial nuclear power plants in Michigan.

Dated at Rockville, Maryland, this 29th day of January, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Michigan and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Michigan enter into this Agreement under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

Michigan recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain program when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Michigan fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through the Emergency Management Division, Department of State Police as described in the Emergency Management Act of 1990.

III. Scope

A. This Agreement defines the way in which NRC and Michigan will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System During emergencies at nuclear power plants, in the State of Michigan.

B. It is understood by the NRC and the State of Michigan that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Michigan, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Michigan on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Michigan authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one user terminal for the State of Michigan during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10 mile Emergency Planning Zone (EPZ) lies within the State of Michigan. The NRC will provide any software which is not commercially available and is necessary for configuring an ERDS workstation.

V. Michigan's General Responsibilities

A. Michigan will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Michigan will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Michigan agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10 mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the utility provided technical liaison personnel or the NRC.

VI. Implementation

Michigan and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Michigan and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Michigan agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Michigan will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the State Freedom of Information Act, 10 CFR 2.790, and other applicable authority.

D. NRC will conduct periodic test of licensee ERDS data links. A copy of the test schedule will be provided to Michigan by the NRC. Michigan may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Michigan will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the Director, Division of Operational Assessment, Office for Analysis and Evaluation of Operational Data, and the Governor-appointed State Director of Emergency Management. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between NRC and Michigan staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Michigan will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: November 20, 1991.

James M. Taylor,

Executive Director for Operations.

For the State of Michigan.

Dated: December 17, 1991.

Col. Michael D. Robinson,

Director, Department of State Police.

[FR Doc. 92-3199 Filed 2-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co., et al. Catawba Nuclear Station, Units 1 and 2; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Duke Power Company, et al. (the licensee), to withdraw its April 24, 1990, application for proposed amendments to facility Operating License Nos. NPF-35 and NPF-52 for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would have relocated the tabular listing of containment penetration conductor overcurrent protective devices from Technical Specification Tables 3.8-1a and 3.8-1b to chapter 16 of the Final Safety Analysis Report, "Selected Licensee Commitment Manual." Proposed changes to Technical Specification 3/4.8.4 were also associated with this change.

The Commission has previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on September 5, 1990 (55 FR 36340). However, by letter dated January 16, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated April 24, 1990, and the licensee's letter dated January 16, 1992, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 4th day of February, 1992.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-3195 Filed 2-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co. et al., Catawba Nuclear Station, Units 1 and 2 Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Duke Power Company, et al. (the licensee), to withdraw its March 26, 1990, application, as supplemented April 26, 1990, for proposed amendments to facility Operating License Nos. NPF-35 and NPF-52 for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would have relocated Table 3.6-1, "Secondary Containment Bypass Leakage Paths;" TS Table 3.6-2a, "Unit 1 Containment Isolation Valves;" and TS Table 3.6-2b, "Unit 2 Containment Isolation Valves," to Chapter 16 of Catawba's Final Safety Analysis Report (FSAR), Selected

Licensee Commitments (SLC) Manual. Proposed changes to TS 1.7, 4.6.1.1., 3.6.1.2, 3.6.3, 4.6.3.1, 4.6.3.2, 4.6.3.3, and TS Bases 3/4.6.4 were also associated with relocation of the above Tables to the FSAR.

The Commission has previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on May 16, 1990 (55 FR 20352). However, by letter dated January 16, 1992, the licensee withdrew the proposed changes.

For further details with respect to this action, see the application for amendments dated March 26, 1990, as supplemented April 26, 1990, and the licensee's letter dated January 16, 1992, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 4th day of February, 1992.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Project Directorate II-3, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-3196 Filed 2-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-424 and 425]

Georgia Power Co, et al.; Vogtle Electric Generating Plant; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-68 ad NPF-81 issued to Georgia Power Company, et al. (the licensee), for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

The proposed amendments would change surveillance requirements in Technical Specifications (TS) 3/4.7.6, 3/4.7.7, and 3/4.9.12 and associated TS Bases, to revise the minimum heater capacity, and the relative humidity testing requirements for the control room emergency filtration system (CREFS), the piping penetration area filtration and exhaust systems (PPAFES), and the fuel handling building post accident filter system (FHBPAFS). The surveillance requirements in TS 4.7.7 and 4.9.12 for the charcoal adsorber decontamination efficiency for PPAFES and FHBPAFS would also be revised. Specifically, the proposed changes would revise.

(1) The minimum heater capacities in TS 4.7.6e(4), 4.7.7d(4), and 4.9.12d(4) for CREFS, PPAFES, and FHBPAFS to 95 kilowatts (kw), 65 kw, and 16 kw, respectively;

(2) The charcoal adsorber decontamination efficiency testing requirements of TS 4.7.7b(2), 4.7.7c, 4.9.12b(2), and 4.9.12c for PPAFES and FHBPAFS to change the relative humidity and methyl iodide penetration criteria limits, 70 and 99.8 percent, to 95 and 90 percent, respectively; and

(3) TSs 4.7.6c(2), 4.7.6d, 4.7.7b(2), 4.7.7c, 4.9.12b(2), and 4.9.12c to refer to ASTM D3803-89 for laboratory testing of charcoal filters.

Additionally, the temporary footnote to TS 4.7.7d(4) would be deleted. TS Bases 3/4.7.6, 3/4.7.7, and 3/4.9.12 would also be revised to reflect the proposed changes.

The CREFS, PPAFES, and FHBPAFS systems ensure that, following a loss of coolant accident, potential radioactive materials leaking from the containment would be filtered such that offsite and control room doses would meet regulatory limits. The TS surveillance requirements ensure that the heaters in these systems are periodically verified to be operable and capable of reducing relative humidity of incoming air to a level necessary to assure proper functioning of the filters.

Previously, by letter dated December 20, 1990, the licensee requested a change to TS 4.7.7.d.4 on the basis that the TS surveillance limits for heat outputs were overly conservative because they were based on the purchase specification's rated capacity for heaters and not on the filter system's design basis functional requirements (i.e., to maintain offsite and control room doses within regulatory limits). In response to the licensee's request, the NRC staff issued Vogtle Amendments 37 (Unit 1) and 27 (Unit 2). These amendments implemented a temporary revision to TS 4.7.7.d.4. allowing surveillance of heaters in the PPAFES to be conducted by verifying that the heater capacity is sufficient to maintain the relative humidity of the airstream through the filters at 70 percent or less under design basis accident conditions when tested in accordance with section 14 of ANSI N510-1980. The TS change was applicable until restart following the fourth refueling outage for Unit 1 and until restart following the second refueling outage for Unit 2. By its application of November 11, 1991, as supplemented by letter dated January 23, 1992, the licensee now proposes to make these TS changes permanent. Additionally, the license proposes similar changes to TS 4.7.6 and 4.9.12.

In support of its request, the licensee has performed accident evaluations and analyses of CREFS, PPAFES, and FHBPAFS performance, to demonstrate filter performance and capabilities to meet post accident dose limits of 10 CFR 100.11 and 10 CFR part 50 Appendix A, General Design Criterion 19. These analyses and evaluations have taken into consideration various parameters such as (1) minimum voltage expected at the heaters in the event of loss of off-site power, (2) ventilation system airflow, (3) initial room temperature and relative humidity, and (4) emergency core cooling system leakage moisture.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is present below:

1. The revised surveillance requirements do not increase the probability or consequences of accidents previously evaluated in the Final Safety Analysis Report (FSAR). The filter systems do not function as initiators of any accidents evaluated in the FSAR. The filter system will continue to perform its safety function as assumed in the revised dose analyses. Because no modifications are being made to the filter systems and the surveillance requirements are consistent with the performance requirements of the filter system, it can be concluded that the filter systems will continue to function as designed. Based on the results of the accident analysis, the changes will result in a reduction of the radiological consequences of a loss of coolant accident (LOCA) as previously evaluated in the FSAR.

2. The revisions to the surveillance requirements will not create the possibility of a new or different kind of accident other than

those already evaluated in the FSAR. No physical changes are being made to the filter systems, and the revised surveillance requirements demonstrate continued operability of the filter systems; therefore, no new accident scenarios, failure mechanisms, or limiting single failures are introduced.

3. The margin of safety provided by the Technical Specifications relative to the ability of the filter systems to perform their safety function is not significantly changed. The program to reduce leakage from those portions of the systems outside containment that could contain highly radioactive fluids during a serious transient or accident to as low as practical levels is maintained, and the revised filtration system surveillance requirements continue to show that the filter systems will control radioactivity releases and resultant offsite and control room doses to levels less than or equal to the acceptance values for previous accident analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 12, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need

to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 11, 1991, as supplemented January 23, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 5th day of February 1992.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–3197 Filed 2–10–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21 issued to the Washington Public Power Supply System (WPPSS) or the licensee, for operation of the WPPSS Nuclear Project No. 2 located in Benton County, Washington.

The proposed amendment would revise the technical specifications to more accurately define the acceptance criteria for the capacity of the blowers in the main steam isolation valve leakage control system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

—It would not involve a significant increase in the probability or consequences of an accident. The MSIV Leakage Control System is a loss-of-coolant (LOCA) mitigation feature that cannot cause an accident. It will not increase the consequences of a LOCA as the required 30 cfm is considerably in excess of the design requirement for the system. The system has been shown to provide for adequate removal and treatment of MSIV leakage (FSAR Table 15.6–16).

—It would not create the possibility of a new or different kind of accident. As an accident mitigation feature the proposed change cannot cause a new kind of accident. It cannot result in a different kind of accident because as discussed above, 30 cfm satisfies the design requirement for the system.

—It would not create a significant decrease in a margin of safety because the proposed 30 cfm acceptance criteria is significantly in excess of the 3.8 scfm requirement based upon the requirement established in the Reference to accommodate five times the Technical Specification leakage.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comment received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 12, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the

Richland Public Library, 955 Northgate Street, Richland, Washington 99352. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 21, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 5th day of February, 1992.

For the Nuclear Regulatory Commission.

Patricia L. Eng,

Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-3193 Filed 2-10-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-84]

Request for Public Comment: Determinations Concerning Thailand's Acts, Policies and Practices Concerning Patent Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for written comments from interested persons.

SUMMARY: The United States Trade Representative (USTR) is seeking further public comment on acts, policies and practices of the Government of Thailand concerning the availability of adequate and effective patent protection in that country. In particular, USTR is requesting comments on whether the Government of Thailand's acts, policies and practices with respect to providing patent protection are unreasonable and burden or restrict U.S. commerce, and if so, what responsive action, if any, should be taken pursuant to section 301 of the Trade Act of 1974, as amended, ("the Trade Act").

DATES: Written comments from interested persons are due on or before Tuesday, March 10, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director, Southeast Asian and Indian Affairs (202) 395–6813, Emery Simon, Deputy Assistant USTR for Intellectual Property (202) 395–6864, or Catherine Field, Associate General Counsel (202) 395–3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On January 30, 1991, the Pharmaceutical Manufacturers' Association (PMA) filed a petition under section 302(a) of the Trade Act, alleging that the Royal Thai Government denies adequate and effective patent protection for pharmaceutical products. Deficiencies in the current Thai patent law include lack of product patent protection for pharmaceuticals, a short term of protection, requirements to manufacture a product or use a process in Thailand, and excessively broad compulsory licensing provisions. The petition requests that Thailand amend its patent law promptly to remedy these deficiencies. PMA also seeks transitional or "pipeline" protection for pharmaceutical products that have been patented in other countries but have not been marketed in Thailand.

On March 15, 1991, the USTR initiated an investigation under section 302(a) of the Trade Act. Thus, pursuant to section 304(a)(B) of the Trade Act, the USTR must determine, on or before March 15, 1992, whether the Government of Thailand's acts, policies and practices concerning patent protection are unreasonable and burden or restrict U.S. commerce. If that determination is affirmative, the USTR must determine what action, if any, to take under section 301 in response.

Requirements for Submissions

The USTR invites all interested persons to submit written comments on the required determinations. Comments will be considered in recommending any determination or action under section 301 to the USTR.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than Tuesday, March 10, 1992. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–84) open to public inspection pursuant to 15 CFR § 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.) The docket shall be available for public inspection at the USTR Reading Room, room 101, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the docket may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 p.m. and from 1 p.m. to 4 p.m., Monday to Friday (except holidays).

Joshua B. Bolten,

General Counsel.

[FR Doc. 92–3336 Filed 2–7–92; 12:03 pm]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–30338; File No. SR–Amex–92–02)

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Additional Settlement Periods

February 4, 1992

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 10, 1992, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–Amex–92–02) as described in Items I, II, and III below, which Items have been prepared by the Amex, a self-regulatory organization ("SRO"). The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis through July 31, 1992.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for six months the pilot program under which Amex Rule 124(e) ("Additional Settlement Periods") is amended to provide for additional settlement periods for securities transactions. These additional periods may include delivery on the second, third, and fourth days after trade date. The text of the proposed rule change is available at the Office of the Secretary of the Amex and at the Commission.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth below in sections A, B, and C, of the most significant aspects of such statements.

A. SRO's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Amex Rule 124(e), bids and offers may specify that an order be subject to any additional settlement periods as the Amex may from time to time determine. On February 1, 1990, the Commission approved on an eighteen month pilot basis procedures under Rule 124(e) for delivery of Amex securities on the second, third, and fourth days following trade date ("T").[2] The

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 27665 (February 1, 1990) 55 FR 4503 [File No. SR–Amex–88–20].

Commission subsequently approved a six-month extension of the pilot through January 31, 1992.[3] Previously, the Commission had approved, on a permanent basis, next day ("T+1") delivery under Amex Rule 124(b).[4] The Amex now proposes that the pilot procedures to accommodate additional settlement periods (*i.e.*, T+2 through T+4) be extended for an additional six-month period through July 31, 1992.

The Amex has reviewed operation of the T+1 through T+4 delivery periods during the pilot program and has concluded that Amex member firm clearance and settlement procedures have adequately accommodated such non-regular way delivery. The Amex is aware of no difficulties resulting from settlement of such transactions directly between the parties involved and outside of the facilities of a registered clearing agency. In addition, such additional delivery periods have afforded greater flexibility to members and their customers in structuring investment strategies and advancing their investment objectives.

2. Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act [5] in general and that it furthers the objectives of section 6(b)(5) [6] in particular in that it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities.

B. SRO's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Amex neither solicited nor received any comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the Amex's proposal to extend the pilot program's procedures for an additional six months is consistent with the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) of the Act.[7] The proposed rule change will permit Amex member firms to accommodate the needs of their customers with respect to transactions on the Amex by providing market facilities for investors who wish to execute transactions for settlement on time frames shorter than the traditional five day settlement period. Moreover, an extension of the pilot program for an additional six months will provide Amex with an additional period to monitor and assess any effects the alternate delivery periods may have on its members' settlement procedures.

The Amex also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change. Accelerated approval will permit the Amex to offer to its clearing members continuity of services under the program relating to T+2 through T+4 settlement periods. The pilot program of procedures for additional settlement periods has imposed no significatnt burdens on member firm clearance and settlement systems, and the procedures are similar to the non-regular way settlement time frames currently permitted by other national securities exchanges.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to the File No. SR-Amex-92-02 and should be submitted by March 3, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR-Amex-92-02) be, and hereby is, approved on a temporary basis through July 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-3175 Filed 2-10-92; 8:45 am]

BILLING CODE 8010-01-M

---

[3] Securities Exchange Act Release No. 29511 (July 31, 1991), 56 FR 37735 [File No. SR-Amex-91-19].

[4] Securities Exchange Act Release No. 26127 (September 29, 1988), 53 FR 39388 [File No. SR-Amex-88-20].

[5] 15 U.S.C. 78f(b) (1988).

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] For reference to other exchanges having T+2 through T+4 delivery periods, see Securities Exchange Act Release No. 27665, *supra* note 2.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30-3(a)(12) (1991).

[Rel. No. IC-18522; 811-3610]

Hutton California Municipal Fund Inc.; Application for Deregistration

February 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Hutton California Municipal Fund Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on January 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Barry D. Miller,

Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Maryland corporation on October 14, 1982. On November 24, 1982, applicant registered under the Act and filed a registration statement on Form N–1 under the Securities Act of 1933. The registration statement became effective on May 27, 1983, and applicant's initial public offering commenced immediately thereafter.

2. On August 5, 1988, applicant's board of directors approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to SLH California Municipals Fund Inc.[1] ("Successor Fund") in exchange for shares of the Successor Fund and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors approved the Plan on July 20, 1988. On or about September 19, 1988, proxy materials relating to the Plan were mailed to applicant's shareholders, who approved the Plan at a special meeting held on October 25, 1988.

3. On November 4, 1988, pursuant to the Plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his/her investment in applicant. The net asset value of applicant as of November 4, 1988 was $159,553,562.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $56,491.73. These expenses were borne by applicant ($10,440.96), the Successor Fund ($16,476.57), and Shearson Lehman Brothers Inc., applicant's investment adviser ($29,574.20).

5. Articles of Transfer were filed on November 4, 1988 and Articles of Dissolution will be filed on behalf of applicant with the Maryland State Department of Assessments and Taxation to effect the dissolution of applicant as a Maryland corporation.

6. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–3179 Filed 2–10–92; 8:45 am]

BILLING CODE 8010–01–M

[1] Effective December 15, 1988, Shearson Lehman California Municipals Fund Inc. changed its name to SLH California Municipals Fund Inc.

[Rel. No. IC–18521; 811–3611]

Hutton New York Municipal Fund Inc.; Application for Deregistration

February 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Hutton New York Municipal Fund Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on January 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Barry D. Miller, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Maryland corporation on October 14, 1982. On November 24, 1982, applicant registered under the Act and filed a registration statement on Form N–1 under the Securities Act of 1933. The registration statement became effective on May 27, 1983, and applicant's initial public offering commenced immediately thereafter.

2. On August 5, 1988, applicant's board of directors approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to SLH New York Municipals Fund Inc.[1] ("Successor Fund") and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors approved the Plan on July 20, 1988. On or about September 19, 1988, proxy materials relating to the Plan were mailed to applicant's shareholders, who approved the Plan at a special meeting held on October 25, 1988.

3. On November 4, 1988, pursuant to the Plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his/her investment in applicant. The net asset value of applicant as of November 4, 1988 was $222,411,912.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $72,126.27. These expenses were borne by applicant ($11,237.71), the Successor Fund ($23,129.46), and Shearson Lehman Brothers Inc., applicant's investment adviser ($37,759.10).

5. Articles of Transfer were filed on November 4, 1988 and Articles of Dissolution will be filed on behalf of applicant with the Maryland State Department of Assessments and Taxation to effect the dissolution of applicant as a Maryland corporation.

6. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation

[1] Effective December 15, 1988, Shearson Lehman New York Municipals Fund Inc changed its name to SLH New York Municipals Fund Inc

or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-3178 Filed 2-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18526; 811-4566]

Olympus Funds Trust; Application

February 5, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Olympus Funds Trust.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 7, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 230 Park Avenue, New York, New York 10169.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272-7779, or Barry D. Miller, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust consisting of two separate series of shares of beneficial interest, Olympus Equity Plus Fund ("Olympus Equity") and Olympus Tax-Exempt High Yield Fund ("Olympus Tax-Free"), is an open-end diversified management investment company. Originally named Continental Tax-Exempt Fund, applicant registered under the 1940 Act and filed a registration statement on Form N-1A on January 21, 1986, which was declared effective on June 5, 1986. Applicant commenced public offering of its shares thereafter.

2. On June 12, 1991, applicant's Board of Trustees approved Agreements and Plans of Reorganization (the "Plans"), by and between applicant, on behalf of its two series, Olympus Equity and Olympus Tax-Free, and Associated Planners Investment Trust, on behalf of its two series, Associated Planners Growth Fund ("AP Growth") and Associated Planners National Tax-Free Fund ("AP Tax-Free"). The Board of Trustees also approved proxy materials for soliciting shareholder approval of the Plans, and made certain determinations in compliance with rule 17a-8.

3. Definitive proxy materials relating to the Plans were filed with the Commission on September 6, 1991, and mailed to shareholders on or about that date.

4. On October 15, 1991, shareholders of both Olympus Equity and Olympus Tax-Free approved the Plans.

5. On October 31, 1991, the closing date pursuant to the Plans (the "Closing Date"), there were 262,510.105 shares outstanding of Olympus Equity, with an aggregate net asset value of $3,241,999.80 and a per unit net asset value of $12.35, and 951,058.646 shares outstanding of Olympus Tax-Free, with an aggregate net asset value of $7,075,876.33 and a per share net asset value of $7.44.

6. On the Closing Date, each of Olympus Growth and Olympus Tax-Free individually transferred to AP Growth and AP Tax-Free, respectively, all of its assets. In consideration, AP Growth and AP Tax-Free assumed all obligations and liabilities of Olympus Equity and Olympus Tax-Free, respectively, and delivered to Olympus Equity and Olympus Tax-Free, respectively, a number of full and fractional shares of beneficial interest of AP Growth and AP Tax-Free equal to the number of full and fractional shares of Olympus Equity and Olympus Tax-Free then outstanding. Each of Olympus Equity and Olympus Tax-Free distributed those shares of AP Growth and AP Tax-Free, respectively, in complete liquidation pro rata to their shareholders of record as of the Closing Date. As reflected in the Combined Proxy Statement and Prospectus (Exhibit D to the application), after the reorganizations the assets of AP Growth and AP Tax-Free consisted entirely of the assets of Olympus Equity and Olympus Tax-Free, respectively.

7. Reorganization expenses, including accounting, printing, proxy solicitation, administrative and certain legal expenses, are approximately $100,000, and have been allocated among Furman Selz Incorporated, Associated Planners Management Company and their affiliated companies.[1] Applicant will not bear any of these expenses.

8. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 92-3177 Filed 2-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18523; 811-3236]

Shearson FMA Cash Fund; Application for Deregistration

February 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Shearson FMA Cash Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on January 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by

[1] Applicant's counsel stated, by letter dated February 4, 1992, that neither Associated Planners Investment Trust nor any other registered investment company bore any reorganization expenses associated with the Plans.

mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW, Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Barry D. Miller, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Massachusetts business trust on July 24, 1981. On July 31, 1981, applicant registered under the Act and filed a registration statement on Form N–1 under the Securities Act of 1933. The registration statement became effective on February 3, 1982, and applicant's initial public offering commenced immediately thereafter.

2. On July 21, 1988, applicant's board of trustees approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to Shearson Lehman Daily Dividend Inc. ("Successor Fund") in exchange for shares of the Successor Fund and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors approved the Plan on July 20, 1988. On or about September 19, 1988, proxy materials relating to the Plan were mailed to applicant's shareholders, who approved the Plan at a special meeting held on November 22, 1988.

3. On December 2, 1988, pursuant to the Plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his/her investment in applicant. The net asset value of applicant as of December 2, 1988 was $1,938,996,333.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $76,858.27. These expenses were borne by applicant ($33,238.00), the Successor Fund ($3,383.62), and Shearson Lehman Brothers Inc., applicant's investment adviser ($40,236.65).

5. Articles of Transfer were filed on December 2, 1988 and a letter of withdrawal will be filed on behalf of applicant with the Commonwealth of Massachusetts to effect the dissolution of applicant as a Massachusetts business trust.

6. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–3180 Filed 2–10–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18524; 811–3238]

Shearson FMA Government Fund; Application for Deregistration

February 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Shearson FMA Government Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on January 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Barry D. Miller, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end non-diversified management investment company organized as a Massachusetts business trust on July 24, 1981. On July 31, 1981, applicant registered under the Act and filed a registration statement on Form N–1 under the Securities Act of 1933. The registration statement became effective on February 3, 1982, and applicant's initial public offering commenced immediately thereafter.

2. On July 21, 1988, applicant's board of trustees approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to Shearson Government and Agencies Inc. ("Successor Fund") in exchange for shares of the Successor Fund and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors approved the Plan on July 20, 1988. On or about September 19, 1988, proxy materials relating to the Plan were mailed to applicant's shareholders, who approved the Plan at a special meeting held on November 22, 1988.

3. On December 2, 1988, pursuant to the Plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his/her investment in applicant. The net asset value of applicant as of December 2, 1988 was $605,597,708.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $40,822.99. These expenses were borne by applicant ($17,974.93), the Successor Fund ($1,476.66), and Shearson Lehman Brothers Inc., applicant's investment adviser ($21,371.40).

5. Articles of Transfer were filed on December 2, 1988 and a letter of withdrawal will be filed on behalf of applicant with the Commonwealth of Massachusetts to effect the dissolution of applicant as a Massachusetts business trust.

6. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-3181 Filed 2-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18525; 811-3237]

Shearson FMA Municipal Fund; Application for Deregistration

February 4, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Shearson FMA Municipal Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on January 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Barry D. Miller, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Massachusetts business trust on July 24, 1981. On July 31, 1981, applicant registered under the Act and filed a registration statement on Form N-1 under the Securities Act of 1933. The registration statement became effective on February 5, 1982, and applicant's initial public offering commenced immediately thereafter.

2. On July 21, 1988, applicant's board of trustees approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to Shearson Lehman Daily Tax-Free Dividend Inc. ("Successor Fund") in exchange for shares of the Successor Fund and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors also approved the plan on July 21, 1988. On or about September 19, 1988, proxy materials relating to the plan were mailed to applicant's shareholders, who approved the plan at a special meeting held on November 22, 1988.

3. On December 2, 1988, pursuant to the plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his/her investment in applicant. The net asset value of applicant as of December 2, 1988 was $1,185,144,201.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $65,826.97. These expenses were borne by applicant ($24,209.45), the Successor Fund ($7,156.19), and Shearson Lehman Brothers Inc., applicant's investment adviser ($34,461.33).

5. Articles of Transfer were filed on December 2, 1988 and a letter of withdrawal will be filed on behalf of applicant with the Commonwealth of Massachusetts to effect the dissolution of applicant as a Massachusetts business trust.

6. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-3182 Filed 2-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No.18528; 811-3742]

Vanguard Adjustable Rate Preferred Stock Fund; Application

February 5, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Vanguard Adjustable Rate Preferred Stock Fund.

SUMMARY OF APPLICATION: Applicant seeks an Order declaring that Applicant has ceased to be an investment company under the Act.

FILING DATES: The application was filed on October 1, 1991 and amended on January 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1992, and should be accompained by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1300 Morris Drive, P.O. Box 110, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Senior Attorney, at (202) 272-2813 or Barry D. Miller, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company and was organized in 1983 as a Pennsylvania Business Trust. Applicant was formerly named the "Vanguard Qualified Dividend Portfolio III." On May 19, 1983, Applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act. On the same day, Applicant also filed a registration statement on Form N–1, registering an indefinite number of Applicant's shares of common stock under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was declared effective on July 15, 1983. On July 26, 1983, Applicant completed its initial public offering of 1,300,000 shares.

2. Applicant was designed for corporate investors, with an investment objective to maximize dividend income which qualified for the intercorporate dividends received deduction under federal tax laws by investing primarily in adjustable rate preferred stocks ("ARPS"). However, since Applicant commenced operations, federal tax law changes have made ARPS a less attractive means of financing for corporations. In addition, ARPS proved to be an expensive form of capital for corporate issuers relative to the alternative of issuing short-term debt for which interest costs are tax deductible. As a result, the amount of ARPS outstanding has remained essentially flat over the past several years and the performance of Applicant could be described as disappointing.

3. With the decline of the ARPS market, Applicant's asset and shareholder bases had eroded significantly. The officers and Board of Trustees of Applicant believed that the liquidation and dissolution of Applicant was in the best interests of Applicant and its shareholders.

4. On February 20, 1991, the Board of Trustees approved a proposed Plan of Liquidation and Dissolution providing for the liquidation and dissolution of substantially all the assets of Applicant. At a Special Meeting of Shareholders of Applicant on April 16, 1991, held in compliance with the laws of the Commonwealth of Pennsylvania, the proposed Plan of Liquidation and Distribution was approved.

5. At the close of business April 23, 1991 (the "Record Date"), there were issued and outstanding 899,894 shares of beneficial interests of Applicant with a net asset value of $18.28 per share. The proportionate interests of shareholders in Applicant's assets were fixed on the basis of their respective holdings on the Record Date. Within seven days thereafter, Applicant mailed to each shareholder of record on the Record Date, (i) a liquidating distribution equal to the shareholder's proportionate interest in Applicant, or (ii) a confirmation of their proportionate interest and a request to return their certificates, if so held. The amount of all liquidating distributions was $16,447,125, applicable to the 899,894 shares outstanding. The only outstanding share certificate was returned and the shareholder submitting such certificate received his proportionate liquidating distribution.

6. The following expenses were paid by Applicant in connection with its liquidation: Accounting costs, $500; proxy statement printing, $4,568; and proxy statement processing, $90.

7. There are no securityholders of Applicant to whom distribution in complete liquidation of their interests have not been made.

8. Applicant as dissolved as a Pennsylvania business trust on April 23, 1991.

9. As of the date of the application, Applicant had no assets and no debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Finally, Applicant is not engaged in, nor does Applicant propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–3176 Filed 2–10–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–92–3]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 2, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 5, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 20049.

Petitioner: T.B.M., Inc.

Sections of the FAR Affected: 14 CFR 91.211(a)(1).

Description of the Relief Sought: To extend Exemption No. 2956, as amended, which allows the petitioner to conduct operations of its DC–6, DC–7, and DC–7B aircraft without a flight crew member holding a current flight engineer certificate.

Docket No.: 21605.

Petitioner: Alaska Airlines.

Sections of the FAR Affected: 14 CFR 121.574(a)(1) and (3).

Description of the Relief Sought: To extend Exemption No. 3850C which allows Alaska Airlines to carry and operate oxygen storage and dispensing equipment for medical use by patients requiring emergency medical attention and being carried as passengers when the equipment is furnished and maintained by hospitals within Alaska.

Docket No.: 26693.

Petitioner: Wright Air Service, Inc.

Sections of the FAR Affected: 14 CFR 135.181(a)(1).

Description of the Relief Sought: To allow the petitioner to operate suitably equipped turbine powered Cessna 208B Caravans in IFR conditions while carrying passengers.

Docket No.: 26713.

Petitioner: Mr. Richard H. Low.

Sections of the FAR Affected: 14 CFR 135.251.

Description of Relief Sought: To allow the petitioner to meet the FAA drug testing requirements imposed on operators who conduct sightseeing flights within a 25 mile radius of an airport by following the requirements of the United States Nuclear Regulatory Commission.

Docket No.: 26714.

Petitioner: Mr. Jack W. Tunstill.

Sections of the FAR Affected: 14 CFR 135.251.

Description of Relief Sought: To allow the petitioner to meet the FAA drug testing requirements imposed on operators who conduct sightseeing flights within a 25 mile radius of an airport by following the requirements of the United States Nuclear Regulatory Commission.

Docket No.: 26730.

Petitioner: New York Helicopter Corporation.

Sections of the FAR Affected: 14 CFR 135.244.

Description of Relief Sought: To allow the petitioner to credit operating experience in the S58T helicopter to operation of its Bell 206 model helicopter.

Docket No.: 26743.

Petitioner: Air Treads, Inc.

Sections of the FAR Affected: 14 CFR 145.45.

Description of Relief Sought: To allow Air Treads, Inc., to operate their repair stations without issuing the required number of Inspection Procedure Manuals to its supervisory and inspection personnel.

Docket No.: 26753.

Petitioner: Regional Airline Association.

Sections of the FAR Affected: 14 CFR 61.49.

Description of Relief Sought: To allow member airlines of the Regional Airline Association, and other similarly situated part 135 air carriers, to retest before the 30 day waiting period required by the FAR those member airmen who fail a written or practical test for the second (or subsequent) time.

Dispositions of Petitions

Docket No.: 22822.

Petitioner: Butler Aircraft Company, T.B.M., Inc.

Sections of the FAR Affected: 14 CFR 91.611.

Description of Relief Sought/ Disposition: To extend Exemption No. 5204 that allows T.B.M., Inc., and its subsidiary, Butler Aircraft Company, to conduct ferry flights, with one engine inoperative on its McDonnell Douglas DC–6/DC–7 series aircraft, without obtaining a special flight permit for each flight.

Grant, January 28, 1992, Exemption No. 5204A.

Docket No.: 25643.

Petitioner: United Executive Jet, Inc.

Sections of the FAR Affected: 14 CFR 135.165(b) (5), (6) and (7).

Description of Relief Sought/ Disposition: To permit United Executive Jet, Inc. to operate its Gates Learjet Corporation Model 35 (Learjet) in extended overwater operations equipped with one long range navigational system (LRNS) and one high-frequency communications system.

Grant, January 31, 1992, Exemption No. 5401.

Docket No.: 25336.

Petitioner: United Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.697(a)(3) and 121.709(b)(3).

Description of Relief Sought/ Disposition: To extend indefinitely Exemption No. 5121, as amended by Exemption No. 5121A, which permits United Airlines, Inc. (UAL), to use a computerized signature to satisfy the signature requirements of §§ 121.697(a)(3) and 121.709(b)(3) of the Federal Aviation Regulations in lieu of a physical signature on the airworthiness release that is part of the log book carried aboard aircraft operated by UAL.

Grant, January 31, 1992, Exemption No. 5121B.

Docket No.: 25934.

Petitioner: Bill Morse Seaplane Service.

Sections of the FAR Affected: 14 CFR 135.243(b)(3).

Description of Relief Sought/ Disposition: To extend Exemption No. 5137, which permits Mr. William L. Morse to the extent necessary, to serve as pilot-in-command for Bill Morse Seaplane Service within a specified area of northern Minnesota without holding an instrument rating, subject to certain conditions and limitations.

Grant, January 27, 1992, Exemption No. 5137A.

Docket No.: 26012.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.583(a).

Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5129, as amended, from § 121.583(a) of the Federal Aviation Regulations, which otherwise would terminate on January 31, 1992. Exemption No. 5129, as amended, permits Federal Express Corporation to transport medical personnel assigned to Project Orbis, a flying eye hospital, without complying with certain passenger carrying requirements, specified in part 121 of the Federal Aviation Regulations.

Grant, January 28, 1992, Exemption No. 5129B.

Docket No.: 26183.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR Part 121, Appendix H.

Description of Relief Sought/ Disposition: To permit the use of Phase II simulator for upgrade training to pilot-in-command (PIC) and the certification check required by § 61.157, when the pilot has previously qualified and served as second-in-command (SIC) with that operator in an airplane in the same type, and initial training to PIC and the certification check required by § 61.157, when the pilot has previously qualified and served as SIC with that operator in an airplane in the same group, without that pilot complying with the minimum number of flight hours that is required to use a Phase II rather than a Phase III simulator for training and certification.

Partial Grant, January 29, 1992, Exemption No. 5400.

Docket No.: 26294.

Petitioner: Douglas Aircraft Company.

Sections of the FAR Affected: 14 CFR 121.358(a).

Description of Relief Sought/ Disposition: To permit Federal Express (FEDEX) to operate a McDonnell Douglas–11 (MD–11), airplane serial number 48459, manufactured after January 2, 1991, without this airplane being equipped with either an approved airborne windshear warning and flight guidance system, an approved airborne detection and avoidance system, or an approved combination of those systems.

Grant, January 17, 1992, Exemption No. 5395.

Docket No.: 26340.

Petitioner: Delta Air Lines, Inc.

Sections of the FAR Affected: 14 CFR 121.433(c)(1)(i), 121.433(c)(1)(iii), 121.440(a), 121.441(a)(1) and 121.441(a)(2)(ii).

Description of Relief Sought/ Disposition: To amend Exemption No. 5271, as amended which permits Delta Air Lines, Inc. (DAL) to conduct a Federal Aviation Administration monitored training program under which DAL pilots-in-command, seconds-in-command, and flight engineers meet annual ground and flight recurrent training requirements and annual proficiency check requirements, subject to certain conditions and limitations.

Grant, January 23, 1992, Exemption No. 5271B.

Docket No.: 26612.

Petitioner: Anthony Bruni.

Sections of the FAR Affected: 14 CFR 65.71(a)(2).

Description of Relief Sought/ Disposition: To enable the petitioner to become eligible for a mechanic certificate and associated ratings although he cannot speak.

Grant, January 27, 1992, Exemption No. 5399.

Docket No.: 26646.

Petitioner: North American Airline Training Group.

Sections of the FAR Affected: 14 CFR Part 63, appendix C, Paragraph (a)(3)(iv)(a).

Descriprion of Relief Sought/ Disposition: To allow North American Airline Training Group's (NAATG) nonpilot flight engineer applicants enrolled in NAATG's flight engineer flight training course of instruction to reduce the required 5 hours of flight training in an airplane to not less than 2 hours of intensive flight training in an airplane, subject to certain provisions.

Grant, January 28, 1992, Exemption No. 5398.

Docket No.: 26659.

Petitioner: Patrick S. Carmean.

Sections of the FAR Affected: 14 CFR 61.151(a).

Description of Relief Sought/ Disposition: To permit the petitioner, who is 21, to be eligible for an airline transport pilot certificate prior to reaching 23 years of age.

Denial, January 23, 1992, Exemption No. 5397.

Docket No.: 26688.

Petitioner: Helicopter Association International.

Sections of the FAR Affected: 14 CFR 135.63 (c) and (d).

Description of Relief Sought/ Disposition: This petition was withdrawn by the petitioner.

Docket No.: 25210.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 63.39(b) (1) and (2), and 121.425(a)(2) (i) and (ii).

Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 4901, as amended, which permits part 121 certificate holders to train and check flight engineer candidates in the performance of the airplane pre-flight inspection using advanced pictorial means instead of the airplane. This exemption also permits part 121 certificate holders and operators of Part 63 flight engineer schools to complete training and checking of flight engineer applicants in an appropriate simulator instead of taking that portion of the practical test in an airplane in flight.

Grant, January 29, 1992, Exemption No. 4901B.

[FR Doc. 92-3171 Filed 2-10-92; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 12, 1992.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10731-N	Amoco Petroleum Additives Company, Wood River, IL.	49 CFR 174.67 (i) & (j)	To authorize oleum tank car unloading lines to remain connected and unattended when unloading is discontinued. (mode 2).
10732-N	LPF/Griffin-Payne Equipment Co., Hutchinson, KS.	49 CFR 173.119, 173.304, 173.315	To authorize the transportation of a portable, trailer mounted meter prover with residual liquefied petroleum gas or propane. (mode 1).
10733-N	SUSPA Compart A.G., 8503 Altdorf, Germany.	49 CFR 173.306 (f)(2)(iii) & (f)(3), 175.3	To authorize shipment of limited quantities of compressed gases, in accumulators which deviate from the required retest parameters. (modes 1, 2, 3, 4, 5).
10735-N	J.R. Simplot Company, Helm, CA	49 CFR 174.67 (i) & (j)	To authorize phosphoric acid filled tank cars to remain connected during unloading without the physical presence of an unloader. (mode 2).
10736-N	General Chemical Corporation, Parsippany, NJ.	49 CFR 174.67 (i) & (j)	To authorize anhydrous ammonia filled tank cars to remain connected during unloading without the physical presence of an unloader. (mode 2).
10737-N	Foam-Tech, Inc., N. Thetford, VT	49 CFR 172.504	To exempt from placarding privately owned vehicles containing various amounts of non-flammable refrigerant gases (mode 1).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10738-N	R.M.I. Division of Koala Technologies, Gardena, CA.	49 CFR 173.118a, 173.119, 173.256, 173.266, 176.340, 178.19, 178.253.	To manufacture, mark and sell a 300 gallon non-DOT specification, rotationally molded, polyethylene tank equipped with bottom outlet designed to be stackable for use in transporting various classes of hazardous material. (modes 1, 2).
10739-N	Hill Brothers Chemical Co., Phoenix, AZ	49 CFR 174.67 (i) & (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (mode 1).
10740-N	CSXT/BIDS, Philadelphia, PA	49 CFR 174.67 (i) & (j)	To authorize tank cars containing various hazardous materials to remain connected during unloading without the physical presence of an unloader. (mode 1).
10741-N	Northern Natural Gas Company, Houston, TX.	49 CFR 178.36-2 thru 178.36-18	To authorize the use of a non-DOT specification cylinder comparable to a 3AX cylinder for use transporting compressed natural gas. (mode 1).

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 5, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-3214 Filed 2-10-92; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before February 26, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
9648-X	Thiokol Corporation, Elkton, MD (See Footnote 1).	9648
10678-X	National Aeronautics & Space Administration (NASA), Washington, DC (See Footnote 2).	10678

[1] To reinstate exemption to authorize shipment of Rocket motor, class B explosive, with igniter installed in a specially designed packaging configuration.

[2] To modify the exemption to include the packaging of a non DOT specification cylinder filled with Isobutane and include cargo aircraft as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
2582-P	Gas Tech, Inc., Hillside, IL	2582
3004-P	Gas Tech, Inc., Hillside, IL	3004
3095-P	Good Chemical & Testing Co., Inc., Hennessey. OK.	3095
4453-P	Kentucky Powder Company, Lexington, KY.	4453
4575-P	Gas Tech, Inc., Hillside, IL	4575
4884-P	Gas Tech, Inc., Hillside, IL	4884
5923-P	Gas Tech, Inc., Hillside, IL	5923
6530-P	Gas Tech, Inc., Hillside, IL	6530
6543-P	Gas Tech, Inc., Hillside, IL	6543
6691-P	Gas Tech, Inc., Hillside, IL	6691
6805-P	Gas Tech, Inc., Hillside, IL	6805
7076-P	Aqua Laboratories, Inc., Amesbury, MA.	7076
7268-P	Gas Tech, Inc., Hillside, IL	7268
7274-P	Gas Tech, Inc., Hillside, IL	7274
7451-P	Gas Tech, Inc., Hillside, IL	7451
7835-P	Gas Tech, Inc., Hillside, IL	7835
7846-P	Gas Tech, Inc., Hillside, IL	7846
7943-P	Patterson Laboratories, Inc. (Patterson West), Phoenix, AZ.	7943
8013-P	Gas Tech, Inc., Hillside, IL	8013
8074-P	Gas Tech, Inc., Hillside, IL	8074
8125-P	Ermetainer S.A. CH-1211 Geneva 1, France.	8125
8156-P	Gas Tech, Inc., Hillside, IL	8156
8214-P	Mazda (North America), Inc., Irvine, CA.	8214
8627-P	Good Chemical & Testing Co., Inc., Hennessey, OK.	8627
8862-P	Gas Tech, Inc., Hillside, IL	8862
8877-P	Union Carbide Chemicals and Plastics Co., Inc., Charleston, WV.	8877
8915-P	Gas Tech, Inc., Hillside, IL	8915
9034-P	Gas Tech, Inc., Hillside, IL	9034
9047-P	Gas Tech, Inc., Hillside, IL	9047
9184-P	The Carbon/Graphite Group, Inc., Pittsburgh, PA.	9184
9414-P	Gas Tech, Inc., Hillside, IL	9414
9533-P	Westinghouse Electric Corporation, Pittsburgh, PA.	9533
9723-P	Waste Conversion Inc., Hatfield, PA.	9723
9946-P	Gas Tech, Inc., Hillside, IL	9946
10001-P	Gas Tech, Inc., Hillside, IL	10001
10184-P	Gas Tech, Inc., Hillside, IL	10184
10429-P	Baker Performance Chemicals, Inc., Houston, TX.	10429
10701-P	Gas Tech, Inc., Hillside, IL	10701
10733-P	SUSPA Compart A.G., 8503 Altdorf, Germany.	10733
10733-P	Verin S.A., 9442 Berneck, Switzerland.	10733

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with

part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 5, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-3215 Filed 2-10-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 91-7]

FEDERAL DEPOSIT INSURANCE CORPORATION

[Docket No. 050984]

FEDERAL RESERVE SYSTEM

[Docket No. R-0734]

The Supervisory Definition of Highly-Leveraged Transactions

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Federal Deposit Insurance Corporation (FDIC); and Board of Governors of the Federal Reserve System (Board).

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System have approved: (1) The discontinuance, after June 30, 1992, of the supervisory definition of highly-leveraged transactions (HLT's); and (2) the discontinuance of the reporting of HLT exposure by banking organizations regulated by the agencies after the June 30, 1992 reporting date. In the interim, the agencies have approved revisions to the supervisory definition of HLT's to be used by banks and bank holding companies for reporting their HLT exposure as of March 31, 1992 and June 30, 1992.

Although the agencies will phase out the use of the formal supervisory definition, guidance previously issued by each agency for assessing individual credits that finance corporate restructurings and for evaluating internal processes for initiating and reviewing these credits will continue to be used by examiners for this purpose. Due to the complex nature and level of risk associated with such financings, boards of directors and management at banking organizations will be expected to continue to monitor carefully their banking organization's risk exposure to these credits.

DATES: *Effective date.* February 11, 1992.

Compliance dates. The use of the supervisory definition of highly-leveraged transactions by the agencies will be discontinued effective after the June 30, 1992 financial reporting date for banking organizations regulated by the agencies. In the period preceding discontinuance of the definition, revisions to the definition have been approved for reporting HLT exposure as of March 31, 1992 and June 30, 1992.

FOR FURTHER INFORMATION CONTACT: OCC: John W. Turner, National Bank Examiner, (202/874-5170), Chief's National Bank Examiner's Office.

FDIC: Garfield Gimber, Examination Specialist, (202/898-6913), Division of Supervision.

Board: Todd Glissman, Supervisory Financial Analyst (202/452-3953), or William Spaniel, Senior Financial Analyst (202/452-3469), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunications Device for the Deaf ("TDD"), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On July 10, 1991, the agencies published for comment the supervisory definition of highly-leveraged transactions (56 FR 31464, July 10, 1991). The agencies sought comment on all aspects of the HLT definition and criteria, as well as comments on specific issues raised by questions which the agencies had received. The comment period expired on September 26, 1991. The agencies received over 265 comments on the proposal.

After reviewing the status of the HLT definition, considering comments received from the public, and evaluating proposed revisions, the agencies have approved the phase out of the supervisory definition of HLT's and the discontinuance of reporting of HLT's after the June 30, 1992 financial reporting by banking organizations. The agencies have also approved revisions to the definition for use by banking organizations in reporting their HLT exposure as of March 30, 1992 and June 30, 1992.

The agencies, in approving the phase out of the supervisory definition of HLT's, have taken under consideration the public comments received on the HLT definition, the current status of HLT credits, the reduced level of merger and acquisition activity in recent months, and the reluctance of lenders, in some cases, to extend credit to sound borrowers. The agencies considered all options for maintaining or phasing out supervisory oversight of highly-leveraged transactions. These included phasing out the definition, giving banks the flexibility to establish their own individual definitions, and proposing revisions to the supervisory definition.

While the agencies did not favor the immediate discontinuance of the definition, the agencies believe that the HLT definition has largely accomplished its purposes and have approved the phase out of the definition. The definition encouraged financial institutions to focus attention on the need for internal controls and review mechanisms to monitor these types of financing transactions. The definition also encouraged financial institutions to structure highly leveraged credits in a manner consistent with the risks involved. The HLT definition has played a role in helping the bank regulatory agencies identify these credits and monitor the risks associated with HLT portfolios over time. At the same time, the supervisory definition of highly-leveraged transactions was not intended to impart supervisory criticism.

With the phase out of the definition, the agencies' examiners will continue to evaluate, on an annual basis, those credits meeting the Shared National Credit Program criteria to assess the risk posed to insured depository institutions and holding companies by the individual credits, and such credits will be subject to supervisory criticism when appropriate. All other credits will be reviewed, as appropriate, through the normal examination process. Examiners will continue to thoroughly review each borrower's financial condition, income and cash flow; the value of any collateral or guarantees; the quality and continuity of the borrower's management; the borrower's ability to service its debt obligations; and other credit quality considerations. Consistent with sound banking practice, banking organizations will continue to be expected to have systems in place to monitor the risks associated with segments of their lending portfolios, including highly leveraged credits.

The agencies have adopted revisions to the definition to address concerns raised by the application and content of the definition. These revisions in the definition are to be used by banking organizations during the period preceding the discontinuance of the definition to report the level of their HLT exposure as of March 30, 1992 and June 30, 1992. These revisions include: (1) Allowing banking organizations to delist certain companies from HLT status that adequately service debt and clearly demonstrate superior cash flow,

relative to their respective industry or peer group; (2) reducing the timeframe in which a company's performance is evaluated before being delisted from HLT status; (3) delisting companies, previously designated as HLT's, emerging from Chapter 11 bankruptcy that are no longer highly leveraged; and (4) excluding certain loans from HLT reporting when fully collateralized by cash or cash equivalent securities.

Cash Flow Test

A cash flow test was not included in the original supervisory HLT definition or delisting criteria. Although delisting criteria state that cash flow coverage is to be taken into consideration when reviewing the overall performance of a borrower for delisting, a specific measure was not defined. The reason for not incorporating a specific cash flow test was because (1) the definition was implemented to provide a consistent means of aggregating and monitoring a type of financing transaction, thus relying heavily on a purpose test and an easily-calculated leverage test; (2) it was deemed problematic to develop a universal cash flow measure that could be used for all industries; and (3) there was a desire to avoid any impression that the definition implied a supervisory criticism of a credit, noting that cash flow is a primary factor in credit quality reviews.

The agencies, in publishing the supervisory definition of highly-leveraged transactions for comment, specifically sought comment on the appropriateness of the inclusion of a cash flow measure. A majority of comments from both compnaies and banks strongly favored the use of a cash flow test in the HLT definition, particularly for delisting purposes. Some favored a standardized cash flow test; others favored an industry-specific cash flow test; and some expressed a preference for both. Several banks stated, however, that it would be difficult to implement a cash flow measure for initially designating credits as HLTs because the analysis would have to be based on cash flow projections and not on historical performance.

In light of the comments received, the agencies reviewed potential cash flow measures including a debt service coverage ratio, an interest coverage ratio, and a ratio measuring the magnitude of debt in relationship to operating cash flow. All measures proved difficult to define adequately, particularly for use in analyzing companies in different industries. Moreover, it was found to be extremely difficult to establish a standardized level of "acceptable" cash flow that could be applied to all industries.

The agencies concluded that it was not appropriate to adopt a standarized cash flow test; rather, the agencies believe that banking organizations should analyze pertinent cash flow ratios for individual HLT companies, then make a determination as to the quality and strength of each company's cash flow performance, subject to examiner review. Under the revision approved by the agencies, the credits of a highly leveraged company could be considered eligible for delisting by banking organizations on a case-by-case basis, if the company demonstrates superior cash flow coverage, relative to the company's-industry or peer group, and the company has adequately serviced debt for a reasonable period of time since its last buyout, acquisition or leveraged recapitalization.

Reduce Timeframes for Delisting

Presently, a borrower designated as an HLT must show good performance for a minimum of two years from the date of the transaction before being eligible for delisting from HLT status.

After two years, if leverage [1] has been reduced below 75 percent, a borrower becomes eligible for delisting. If a borrower remains highly leveraged, however, the borrower must demonstrate performance for a period of up to four years before being eligible to be delisted from HLT status.

Upon considering the comments received, the agencies have determined that the delisting criteria should be amended by:

(a) Reducing the delisting timeframe from two years to one year for companies that deleverage below 75 percent or were designated as HLTs under the "doubling of liabilities to greater than 50 percent" leverage test. Under this standard, companies would have to continue to meet general performance criteria to be delisted.

(b) Reducing the delisting timeframe from four years to three years for companies that remain highly leveraged. A company would have to demonstrate performance for three consecutive years since its last highly-leveraged transaction and have a positive net worth in order to be eligible for delisting. The requirement that a company's leverage ratio not significantly exceed its industry norm in order to be delisted would be eliminated.

The agencies believe that allowing companies that deleverage themselves to be delisted sooner from HLT status should encourage companies to improve their capitalization and credit standing by reducing leverage and issuing additional equity. These substantive changes to HLT delisting criteria are expected to allow a significant number of companies to be removed from HLT status, given the number of companies recently issuing equity and the number of HLTs that have now aged beyond three years.

Delist Certain Companies Emerging From Chapter 11 Bankruptcy

In previous guidance, post-reorganization debt (after a company emerges from Chapter 11 bankruptcy) of a company that was designated HLT prior to bankruptcy proceedings retained an HLT designation until the company became eligible for delisting. Although a company was often deleveraged as a result of the reorganization, the company could not be delisted for at least two years from the date it was designated as an HLT.

Several comments stated that a company should not be designated HLT upon emerging from Chapter 11 reorganization if leverage is below 75 percent. It was indicated that continuing the HLT designation could interfere with these companies' ability to obtain post-reorganization financing. The agencies recognize that the purpose of Chapter 11 of the bankruptcy code is to help reorganize companies pursuant to a court-approved plan. Further, many reorganized companies emerging from bankruptcy are no longer highly leveraged and are, in essence, operating with a new balance sheet.

Reflecting these views, the Congress in the recently passed banking legislation "Federal Deposit Insurance Corporation Improvement Act of 1991" (section 474) amended the Federal Deposit Insurance Act to prohibit a federal banking agency from designating by regulation or otherwise a corporation as a highly-leveraged transaction (HLT) solely because such corporation is or has been a debtor or bankrupt under Title 11, if after confirmation of reorganization, such corporation would not otherwise be highly leveraged. In implementing the Congressional intent underlying this amendment, the agencies believe that this should serve to emphasize the role played by the bankruptcy code and remove any implied hindrance to this type of lending.

[1] The leverage ratio is defined as total liabilities divided by total liabilities divided by total assets as reflected on financial statements prepared in accordance with generally accepted accounting principles (GAAP).

Exclude Certain Fully Collateralized Loans from HLT Status

Comments were received on the inclusion of certain loans fully-collateralized by cash or cash equivalent securities in an HLT company's aggregate HLT exposure. It was indicated that the purpose of these fully-collateralized loans is generally not to take on additional debt for acquisition or restructuring purposes. It was also noted that a company arranging such a loan had sufficient liquid resources available on its balance sheet and, therefore, would not have needed to borrow such funds. Given these reasons, the agencies have found it appropriate to exclude certain fully-collateralized loans from HLT reporting by banking organizations.

Other comments

Comment letters expressed support for several additional revisions to the HLT definition that the agencies have decided not to adopt at this time. Potential revisions that were not adopted include (1) exempting companies with investment-grade senior debt from HLT designation and (2) excluding debt of certain subsidiaries from a consolidated company's HLT designation.

Under HLT guidelines, it is possible for a company with investment-grade senior debt to be designated an HLT if the company has been involved in significant merger and acquisition activity and has very high leverage. Comment letters indicated, however, that very few such companies exist.

To date, investment-grade companies have not been exempted from the HLT definition because of a desire to (1) avoid including credit quality criteria in the definition; (2) avoid inequitable treatment for companies that may meet investment grade criteria but are too small to be evaluated by the major rating agencies; and (3) avoid dependence on outside credit rating agencies, noting that credit quality of a company can quickly deteriorate under the burden of heavy debt.

Based on comment letters received, the agencies have determined that exempting companies with investment-grade senior debt from HLT designation would appear to have little impact on the number of companies designated as HLTs, but it would serve to reinforce the perception that an HLT designation conveys credit quality information or criticism. Some comments noted that financial institutions could publicly disclose the level of investment-grade companies in their HLT portfolios, thus mitigating criticism by analysts of this portion of their portfolios. Given that exempting investment-grade companies from HLT designation could further reinforce negative perceptions concerning the overall credit quality of HLT loan portfolios, the agencies decided not to adopt such a change.

Comments were received on the inclusion of the debt of subsidiaries as part of the aggregate HLT exposure. According to the HLT guidelines, if a company satisfies the HLT purpose and leverage tests on a consolidated basis, then a loan to any part of the organization is designated HLT. Also, if a subsidiary satisfies the HLT criteria and its debt level is significant enough to cause the consolidated organization to meet HLT leverage criteria, then all debt of the entire organization is designated HLT.

The review of financial statements and calculation of the leverage ratio for HLT purposes is conducted using generally accepted accounting principles (GAAP). Analyzing companies on a consolidated basis when determining HLT status is considered consistent with GAAP. Moreover, experience with consolidated organizations has shown that when one aspect of a company's operations becomes imperiled, the entire organization may be negatively impacted.

Although a significant number of comments favored excluding debt of certain subsidiaries from a parent company's HLT designation if appropriate protective covenants are maintained between the parent and subsidiary, the agencies found significant problems related to the use and review of protective covenants. Protective covenants cited as examples include restrictions on the movement of assets between parent and subsidiary companies, limitations on the payment of dividends to a parent company, restrictions on inter-company debt, and so forth. Each protective covenant, however, is unique, thus requiring a very difficult and time consuming review and evaluation process to determine its strength. Also, protective covenants may not work as specified when a company is in financial difficulty or enters bankruptcy proceedings. Experience has shown that technical separation of companies through the use of loan covenants has not always been effective in protecting a company against liabilities emanating from its parent, subsidiary, or affiliate, especially in bankruptcy situations where the separation between parent and subsidiary can and has been breached.

Given a desire to adhere closely to GAAP whenever possible, the influence that parent companies can exert over so-called "stand alone" subsidiaries when financial needs arise, and the difficulties invovled in evaluating and enforcing protective covenants, the agencies have determined not to exclude certain subsidiaries of HLT parent companies from the HLT designation.

Definition and Guidance Regarding Highly-Leveraged Transactions ("HLTs"), As Revised

Summary of Definition

A bank or bank holding company is considered to be involved in a highly-leveraged transaction when credit is extended to or investment is made in a business where the financing transaction involves the buyout, acquisition, or recapitalization of an existing business and one of the following criteria is met:

(a) The transaction results in a liabilities-to-assets leverage ratio higher than 75 percent; or

(b) The transaction at least doubles the subject company's liabilities and results in a liabilities-to-assets leverage ratio higher than 50 percent; or

(c) The transaction is designated an HLT by a syndication agent or a federal bank regulator.

Additional Guidance on the Definition of HLTs

A highly-leveraged transaction is a type of financing which involves the restructuring of an ongoing business concern financed primarily with debt. The purpose of an individual credit is most important when initially determining HLT status. Once an individual credit is designated as an HLT, all currently outstanding and future obligations of the same borrower are also included in HLT totals. This includes working capital loans and other ordinary credits, until such time as the borrower is delisted.

The regulatory purpose of the HLT definition is to provide a consistent means of aggregating and monitoring this type of financing transaction. It must be pointed out that the HLT designation does not imply a supervisory criticism of a credit. Before any HLT or any other credit is criticized, an examiner should review a whole range of factors on a credit-by-credit basis. These factors include cash flow, general ability to pay interest and principal on outstanding debt, economic conditions and trends, the borrower's future prospects, the quality and continuity of the borrower's management, and the lender's collateral position. Participation of banking organizations in highly-leveraged

transactions is not considered inappropriate so long as it is conducted in a sound and prudent manner, including the maintenance of adequate capital and loan loss reserves to support the risks associated with these transactions.

Borrowers having questions regarding the HLT definition should first refer these questions to their bankers. Bankers should then refer questions they cannot answer to the bank's primary federal regulator.

Purpose Test

To become eligible for designation as an HLT, a financing transaction must involve the buyout, acquisition, or recapitalization of an existing business, domestic or foreign. This definition encompasses traditional leveraged buyouts, management buyouts, corporate mergers and acquisitions, and significant stock buybacks. Leveraged Employee Stock Option Plans (ESOPs) are also included when used to acquire or recapitalize an existing business.

For purposes of satisfying the HLT purpose test, a leveraged recapitalization involves a replacement of equity with debt on a company's balance sheet by means of a stock repurchase or dividend payout. Refinancing existing debt in a company is not deemed to be a leveraged recapitalization.

Exclusions from the HLT Definition

Single Asset or Lease: This purpose test exludes the acquisition or recapitalization of a single asset or lease (e.g., a large commercial building or an aircraft), or a shell company formed to hold a single asset or lease, from the HLT definition. Although such an acquisition may be highly leveraged, the asset or lease, in and of itself, is not considered an ongoing business concern and, therefore, is not intended to be included in the HLT category. However, the acquisition or recapitalization of a leasing corporation which invests in fleets of equipment for leasing, or a building company which invests in real estate projects would satisfy the HLT purpose test.

Threshold Test: Loans and exposures to any obligor in which the total financing package, including all obligations held by all participants, does not exceed $20 million, at the time of origination, may be excluded from HLT designation. Nonetheless, there may be some banking organizations that in the aggregate have significant exposure to transactions below the threshold level. It is expected that those organizations would continue to monitor closely these transactions as part of their aggregate HLT exposures.

Historical Cutoff Date: An HLT transaction not included in the Shared National Credit Program, that meets or exceeds the $20 million test, may be excluded from HLT designation if it originated prior to January 1, 1987, the original terms and conditions of the credit are materially unchanged, the credit has not been criticized by examiners, and the financial condition of the debtor has not deteriorated.

Debtor-in-Possession Financings: Court-approved debtor-in-possession (or trustee-in-possession) financing for a business concern in Chapter 11 reorganization proceedings will generally be exempt from HLT designation. All pre-petition debt of an HLT borrower and any post-reorganization debt (after a company emerges from Chapter 11 bankruptcy) will continue to be included in HLT exposure until delisting occurs.

Loans Fully Collateralized With Cash or Cash Equivalents: All loans (credit facilities) that are fully-collateralized with cash or cash equivalents are excluded from HLT reporting by banking organizations. Cash collateral consists of a deposit in the financial institution advancing the loan proceeds, segregated and under the control of the financial institution, and unequivocally pledged to secure the loan. Cash equivalents are deemed to include U.S. Government and certain other readily-marketable securities qualifying for a zero risk-weight under risk-based capital standards. Cash equivalents must be held in custody by and unequivocally pledged to the lending financial institution.

Leverage Tests

In addition to the purpose test, one of the following criteria must be met for the transaction to be considered an HLT:

(1) The transaction at least doubles the subject company's liabilities and results in a total liabilities to total assets (leverage) ratio higher than 50 percent.

Note: The purpose of this leverage test is to capture transactions in which a company must suddenly deal with a substantially higher debt burden. The greatest risk in a credit exposure is not necessarily the absolute level of debt but may be the impact on a company of significant new debt. A key HLT success factor is ability to handle a sudden, large increase in debt.

The "doubling of liabilities" is intended to capture those transactions where new debt is used to facilitate the buyout, acquisition, or recapitalization of a business. If the sum of the acquiring and acquired companies' liabilities would double as a result of the new debt taken on to effect the combination of the companies, then the transaction is considered an HLT, and all exposure to the company is designated an HLT. It is not intended to cover a doubling resulting from the simple addition of the existing liabilities of the two companies.

Any refinanced portion of old debt in a transaction should continue to be treated as old debt for purposes of applying this leverage test. Further, if there was no debt in either company prior to the transaction, then any new debt will result in a "doubling of liabilities."

In an acquisition involving one or more operating divisions of a company (as opposed to stand-along subsidiaries), existing liabilities of the seller associated with specific operating assets being transferred in the transaction may be allocated to the resulting company for purposes of applying the "doubling of liabilities" test. The burden of proof is on the resulting company and its financial institution(s) to substantiate that the allocation of the seller's liabilities to the resulting company is appropriate.

When calculating a company's leverage for the purpose of this test, captive finance company subsidiaries and subsidiary depository institutions should be excluded from the consolidated organization.

(2) The transaction results in a total liabilities to total assets (leverage) ratio higher than 75 percent.

Note: When a company's leverage ratio exceeds 75 percent, the determination of whether exposure to the company is designated an HLT further depends on the composition of the company's total liabilities after the transaction. If a significant portion of the liabilities (generally 25 percent or more of total liabilities) derives from buyouts, acquisitions, or recapitalizations, either past or present, then all exposure to the company is designated an HLT. If, after the transaction, debt related to buyouts, acquisitions, or recapitalizations, either past or present, represents less than 25 percent of total liabilities, then the exposure to the company need not be designated an HLT.

Again, when calculating a company's leverage for the purpose of this test, captive finance company subsidiaries and subsidiary depository institutions should be excluded from the consolidated organization.

(3) The transaction is designated an HLT by a syndication agent.

In specific cases, the bank supervisory agencies may also designate a transaction as an HLT even if it does not meet the conditions outlined above. (It is anticipated that this would be done infrequently and only in material cases).

Definition of the Leverage Ratio

The leverage ratio is total liabilities divided by total assets as reflected in financial statements prepared in accordance with generally accepted accounting principles (GAAP). Total assets of the resulting enterprise include intangible assets (such as goodwill). Total liabilities include all forms of debt (including any new debt taken on to facilitate the transaction) and claims, including all subordinated debt and non-perpetual preferred stock. Perpetual preferred stock is generally considered equity for purposes of calculating HLT leverage. However, exceptions could be made on a case-by-case basis if the stock has characteristics more akin to debt than equity.

Off-balance sheet exposure, including claims related to foreign exchange contracts, interest rate swaps, and other risk protection or cash management products may normally be excluded from HLT exposure as long as their credit equivalent exposure is small relative to other types of obligations. (It is expected, however, that internal management information and control systems be in place to capture these exposures.)

If a parent company uses "double leverage" (that is, takes on debt and downstreams it as equity to a subsidiary) to assist a subsidiary in an HLT purpose-related transaction, then the debt at the parent company will be considered HLT purpose-related debt when calculating leverage for the company on a consolidated basis.

In an acquisition involving a pure assumption of debt with no new debt issued, the transaction is not designated an HLT unless the resulting company's aggregate outstanding HLT purpose-related debt (from all previous transactions) is significant (generally 25 percent or more of total liabilities) and the 75 percent leverage test is satisfied.

Consolidation of HLT Exposure

All credit extended to, or investments made in an HLT should be aggregated with any ordinary business loans to, or investments in, the same obligor.

If a company satisfies the HLT purpose and leverage tests on a consolidated basis, then a loan to any part of the organization is deemed to be an HLT. On the other hand, if only a subsidiary of a company satisfies the HLT tests, then the subsidiary could "stand alone" as an HLT; however, if the subsidiary's debt level is significant enough to cause the consolidated organization to meet HLT leverage criteria, then all debt of the entire organization is designated HLT.

Guarantees of Payment

If a parent company supplies an irrevocable, unconditional guarantee of payment on behalf of its subsidiary and the leverage of the consolidated organization does not meet HLT leverage criteria, then the subsidiary will generally not be designated an HLT. On the other hand, if the subsidiary's leverage is significant enough to cause the consolidated organization to meet HLT leverage criteria, then all debt of the entire organization is accorded HLT status.

(Note: Third-party guarantees and guarantees by related subsidiaries of a company have no effect on the HLT designation. While these types of guarantees offer credit enhancement benefits which will be taken into consideration during the review of individual credits by examiners, they generally lack the stronger bonds of support inherent in the relationship between a parent and its subsidiary.)

When a foreign parent company provides the equivalent of an irrevocable and unconditional guarantee of payment on behalf of a subsidiary, the subsidiary's debt will normally not be designated as HLT debt as long as the consolidated organization does not meet HLT leverage criteria and the following two conditions are met:

(1) Written opinions from legal counsel in the country of origin and the United States are provided which state that the equivalent of a written guarantee of debt repayment exists which is irrevocable and unconditional; and

(2) The credit files in the U.S. banking organizations lending to the subsidiary contain consolidated financial statements for the foreign parent stated in U.S. dollars under U.S. accounting rules.

Agent and Lead Bank Responsibility

To ensure consistent application of the definition, the agent or lead bank is responsible for determining whether or not a transaction qualifies as an HLT. The agent or lead bank is charged with the timely notification to participants regarding the status of the transaction and of any change in that status, i.e. designation as an HLT or delisting as an HLT.

The responsibility of the agent or lead bank to determine HLT status does not preclude a participant bank from designating a transaction as an HLT or relieve a participant from performing its own credit analysis. Examiners will review transactions for compliance with the HLT definition in the context of the Shared National Credit Program and during regular on-site examinations.

Delisting Criteria

HLT exposure of a given borrower may be removed from HLT status upon satisfying one of the following criteria:

(a) Credits of a company emerging from protection under Chapter 11 of the U.S. Bankruptcy Code at the consummation of a court-approved plan of reorganization will be immediately delisted from HLT status, if the company's leverage ratio is less than 75 percent at the time of reorganization.

(b) A borrower's credits that were designated as HLTs under the "doubling of liabilities to greater than 50 percent" leverage test or that have reduced leverage to less than 75 percent will be considered eligible for delisting if the company has performed well for one year (since its last buyout, acquisition, or leveraged recapitalization involving financing) and demonstrates an ability to continue satisfactorily servicing debt. To verify adequate performance and validate the appropriateness of financial projections of a company, the lender should conduct a thorough review of the obligor to include, at a minimum, overall management performance against the business plan, cash flow coverages, operating margins, industry risk, and status of asset sales, if applicable.

(c) Credits of a company whose leverage continues to exceed the 75 percent leverage test will be considered eligible for delisting by banking organizations on a case-by-case basis, if the company demonstrates superior cash flow coverage, relative to the company's industry or peer group, and the company has adequately serviced debt for a reasonable period of time since its last buyout, acquisition, or leveraged recapitalization involving financing. To verify strong performance, the lender should conduct a thorough review of the obligor to include, at a minimum, the quality and strength of cash flow coverages, operating margins, reduction in leverage, appropriateness of the company's financial projections, overall management performance against the business plan, industry risk, and status of asset sales, if applicable. Credits delisted in this manner will subsequently be reviewed, and potentially subject to relisting, by examiners during the normal course of an examination.

(d) Credits of a company whose leverage continues to exceed the 75 percent leverage test will be considered eligible for delisting if the company has performed adequately for at least three years since its last buyout, acquisition,

or leveraged recapitalization involving financing; and the company has a positive net worth. To verify adequate performance and validate the appropriateness of financial projections of a company, the lender should conduct a thorough review of the obligor to include, at a minimum, overall management performance against the business plan, cash flow coverages, operating margins, industry risk, and status of asset sales, if applicable.

It is expected that banks will maintain records of delisted exposures and reasons for delisting. After delisting, any significant changes in the obligor's financial condition should cause the exposure to be reviewed for relisting. Record pertaining to delisting and relisting of HLTs will be reviewed by examiners in the context of the Shared National Credit Program and/or regular on-site examinations.

Dated: February 6, 1992.

Robert L. Clarke,

Comptroller of the Currency.

Hoyle L. Robinson,

Executive Secretary of the Federal Deposit Insurance Corporation.

William W. Wiles,

Secretary of the Board of Governors of the Federal Reserve System.

[FR Doc. 92-3185 Filed 2-10-92; 8:45 am]

BILLING CODES: 4810-33-M, 6714-01-M, 6210-01-M

Senior Executive Service; Combined Performance Review Board (PRB)

AGENCY: Treasury Department.

ACTION: Notice of members of Combined PRB.

SUMMARY: Pursuant to 5 U.S.C. 4313(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of Engraving and Printing, the Financial Management Service, the U.S. Mint, the Bureau of the Public Debt, and the U.S. Savings Bonds Division. This Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the five bureaus, and makes recommendations regarding ratings, bonuses, and other personnel actions. Three voting members constitute a quorum. The names and titles of the Combined PRB members are as follows:

Primary Members

Timothy G. Vigotsky, Assistant Director (Management), E&P.
Michael T. Smokovich, Deputy Commissioner, FMS.
Bland Brockenborough, Assistant Commissioner, Management, FMS.
Andrew Cosgarea, Jr., Associate Director for Operations, Mint.
Michael D. Pecovish, Assistant Commissioner, Public Debt Accounting, PD.
Thomas E. Anfinson, Executive Director, SBD.

Alternate Members

Carl V. D'Alessandro, Associate Director (Chief Operating Officer), E&P.
Diane E. Clark, Assistant Commissioner, Financial Information, FMS.
Mitchell A. Levine, Assistant Commissioner, Regional Operations, FMS.
Robert Jenkins, Director, Office of Automated Information Systems, Mint.
Eleanor J. Holsopple, Assistant Commissioner, Securities and Accounting Services, PD.
Richard J. Schneebeli, Deputy Executive Director for Marketing and Sales, SBD.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Timothy G. Vigotsky, Assistant Director (Management), Bureau of Engraving and Printing, 14th & C Sts., SW., Washington, DC 20228; telephone (202) 447-9912 or 447-0273 TDD. This notice does not meet the Department's criteria for significant regulations.

Timothy G. Vigotsky,

Assistant Director (Management), E&P

[FR Doc. 92-3127 Filed 2-10-92; 8:45 am]

BILLING CODE 4840-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 28
Tuesday, February 11, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Tuesday, February 18, 1992, and following.

PLACE: 1825 Connecticut Avenue, N.W., Suite 918, Washington, D.C. 20009.

STATUS: Closed pursuant to a vote taken January 31, 1992, based upon the provisions of 5 U.S.C. 552b(c)(10) (adjudication) and 37 CFR 301.13(i) (adjudication).

MATTERS TO BE CONSIDERED: Adjudication of the 1989 cable distribution proceeding.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, N.W., Suite 918, Washington, D.C. 20009, (202) 606-4400.

Dated: February 5, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92-3209 Filed 2-6-92; 1:52 pm]

BILLING CODE 1410-09-M

FEDERAL COMMUNICATIONS COMMISSION

To Hold Open Commission Meeting, Thursday, February 13, 1992

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 13, 1992, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No, Bureau, and Subject

1—Office of Engineering and Technology—Title: Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services (GEN Docket No. 90-217). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* on reconsideration in this proceeding.

2—Common Carrier—Title: In the Matter of Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions (CC Docket No. 91-273). Summary: The Commission will consider adoption of a *Report and Order* concerning the final rules which provide for notification by common carriers of major disruptions to telephone services provided by their networks.

3—Common Carrier—Title: Amendment of Rules Governing Procedures to be Followed when Formal Complaints are Filed Against Common Carriers. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* which would solicit comment on proposed changes to the Rules regarding procedures applied by the Commission in handling formal complaints against common carriers.

4—Mass Media—Title: Clarification of Spousal Attribution Policy (MM Docket No. 91-122). Summary: The Commission will consider adoption of a *Policy Statement* clarifying its policies regarding the attribution of mass media interests of one spouse to another for purposes of the multiple ownership rules and cross-interest policies.

5—Mass Media—Title: Cable Television Technical and Operational Requirements (MM Docket Nos. 91-169 and 85-38). Summary: The Commission will consider adoption of a *Report and Order* concerning technical standards for cable television systems.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Issued: February 6, 1992.

Donna R. Searcy,

Secretary.

[FR Doc. 92-3319 Filed 2-7-92; 10:49 am]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 13, 1992.

PLACE: Room 600, 1730 K Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Consolidation Coal Company*, Docket No. WEVA 89-234-R, etc.

(Issues include whether the judge erred in concluding that (i) 30 CFR § 50.30-1(g)(3) is a valid, enforceable regulation; (ii) Consolidation violated the regulation; and (iii) civil penalties may be assessed for the violations.)

Any person attending this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Consolidation Coal Company*, Docket No. WEVA 89-234-R, etc. (See Oral Argument listing)

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 for toll free.

Issued: February 6, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92-3395 Filed 2-7-92; 2:21 pm]

BILLING CODE 6735-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 1:30 p.m., February 1992.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 21, 1992, Board meeting.
2. Labor Department briefing.
3. Thrift Savings Plan activity report by the Executive Director.
4. Review of KPMG Peat Marwick audit reports entitled:

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Billing Process at the United States Department of Agriculture, Office of Finance and Management, National Finance Center"

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan C and F Fund Investment Management Operations at Wells Fargo Institution Trust Company and Wells Fargo Nikko Investment Advisors"

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Audit Performed by the U.S. Central Intelligence Agency, Office of the Inspector General"

"Pension and Welfare Benefits Administration Follow-up Review of the Thrift Savings Plan Annuity Operations at the Metropolitan Life Insurance Company and the Federal Retirement Thrift Investment Board"

"Pension and Welfare Benefit Administration Review of the Thrift Savings Plan Account Maintenance and Participant Support Subsystems at the United States Department of Agriculture, Office of Finance and Management, National Finance Center"

5. Quarterly review of investment policy.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: February 7, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92–3361 Filed 2–7–92; 1:31 pm]

BILLING CODE 6760–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, February 25, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20024.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5434A—Railroad Accident Report: Derailment and Collision of Amtrak Train 66 with MBTA Commuter Train 906 at Back Bay Station, Boston, Massachusetts, December 12, 1990.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 7, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92–3393 Filed 2–7–92; 2:19 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 10, 17, 24, and March 2, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 10

Wednesday, February 12

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Georgia Power Company, Intervener's Appeal of LBP–91–21

Week of February 17—Tentative

Friday, February 21

10:00 a.m.
IG Briefing on Review of NRC Programs (Closed—Ex. 2)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 24—Tentative

Tuesday, February 25

10:00 a.m.
Briefing on Design Basis Reconstitution Programs (Public Meeting)

Wednesday, February 26

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 2—Tentative

Wednesday, March 4

10:00 a.m.
Briefing by NARUC (Public Meeting)

Thursday, March 5

2:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: February 6, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92–3394 Filed 2–7–92; 2:20 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 57, No. 28
Tuesday, February 11, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Bank Reports of Condition and Income: Proposed Change in Definition of One-to-Four Family Residential Mortgages

Correction

In notice document 92-2444, beginning on page 4027 in the issue of Monday, February 3, 1992, make the following correction: On page 4027, in the second column, under **DATES**, in the second line, "February 3, 1992" should read "March 4, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 235

RIN 0970-AA75

Aid to Families With Dependent Children

Correction

In rule document 91-29363 beginning on page 64195, in the issue of Monday, December 9, 1991, make the following corrections#:

§ 235.113 [Corrected]

On page 64205, in the third column, in § 235.113(b)(3)(ii)(G) and (I), in line four of each paragraph, "international" should read "intentional".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0498]

Superharm Corp., et al.; Withdrawal of Approval of Abbreviated New Drug Applications

Correction

In notice document 91-30095 beginning on page 65489 in the issue of Tuesday, December 17, make the following corrections:

1. On page 65489, in the second column, under **EFFECTIVE DATE**, "1991" should read "1992".

2. On page 65490, in the first column, in the first paragraph following the table, in the last line, "1991" should read "1992".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 12, 16, 20, 500, 510, 511, and 514

[Docket No. 88N-0058]

RIN 0905-AA96

New Animal Drug Regulations

Correction

In proposed rule document 91-29779, beginning on page 65544, in the issue of Tuesday, December 17, 1991, make the following corrections:

1. On page 65547, in the 1st column,:

a. In the 31st line, "24 CFR" should read "21 CFR".

b. In the 33d line, "542(m)" should read "512(m)".

c. In the 34th line, "(24 U.S.C. 360b(m))." should read "(21 U.S.C. 360b(m)).".

PART 16 [CORRECTED]

2. On page 65563, in the first column, in the last line of the authority citation,"U.S.C. 1451 1461" should read "U.S.C. 1451-1461".

§ 514.50 [Corrected]

3. On page 65565, in the second column, in § 514.50(c)(2)(iii), in the third line, "animal" was misspelled.

§ 514.72 [Corrected]

4. On page 65571, in the first column, in § 514.72(c), in the fifth line, "special" was misspelled.

§ 514.105 [Corrected]

5. On page 65573, in the second column, in § 514.105(a)(1), in the second line, "article:" was misspelled.

§ 514.125 [Corrected]

6. On page 65574, in the third column, in § 514.125(a)(1), in the third line, "514.122;" should read "514.120;".

§ 514.150 [Corrected]

7. On page 65577, in the first column, in § 514.150(b), in the first line, "applicant" was misspelled.

BILLING CODE 1505-01-D

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Proposed Revision to OMB Circular A-45, "Policy Governing Charges for Rental Quarters and Related Facilities;" Invitation for Public Comment

Correction

In notice document 91-28088 beginning on page 58932, in the issue of Friday, November 22, 1991, make the following correction:

On page 58935, in the second column, in the **DATES** section, in the second line, "December 23, 1991" should read "January 21, 1992".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

Correction

In rule document 92-1080 beginning on page 1644 in the issue of Wednesday, January 15, 1992, make the following correction:

Appendix B [Corrected]

On page 1645, in the table, in the second column, in the second entry, "2–1–82" should read "2–1–92".

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 57, No. 28

Tuesday, February 11, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3909-4146.....3
4147-4356.....4
4357-4542.....5
4543-4690.....6
4691-4834.....7
4835-4924.....10
4925-5050.....11

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6402.....4833

7 CFR

1.....3909
271.....3909
278.....3909, 3913
279.....3909
907.....3916, 4691, 4835
916.....3918
918.....4147
944.....4148
1007.....3920
1065.....4150, 4151
1413.....3921
1421.....4553
1710.....4513
1940.....3922
1942.....4357
1980.....4336, 4358

Proposed Rules:
273.....3961, 4793
319.....3963
703.....4164, 4378
959.....4164
998.....3965

8 CFR

103.....3925
245a.....3925

9 CFR

78.....3926

10 CFR

2.....4152
15.....4152
54.....4912

Proposed Rules:
Ch. I.....4166
100.....4168
170.....4744
171.....4744

12 CFR

335.....4699
Ch. XV.....4715

13 CFR

121.....4837, 4839

14 CFR

39.....3927-3936, 4153, 4842, 4848, 4925
97.....4360, 4361
1214.....4544
1203b.....4926
1212.....4928

Proposed Rules:
Ch. I.....4744
39.....3966
71.....4168, 4589
91.....4352
135.....4352
Ch. II.....4744
Ch. III.....4744

15 CFR

29b.....4715
768.....4553
770.....4553
771.....4553
772.....4553
773.....4553
774.....4553
775.....4553
776.....4553
777.....4553
778.....4553
779.....4553
785.....4553
786.....4553
790.....4553
791.....4553
799.....4553
1201.....4154

16 CFR

600.....4935

17 CFR

146.....4363

18 CFR

157.....4716
271.....4852, 4853

19 CFR

10.....4793, 4936
101.....4717

Proposed Rules:
24.....4589
113.....4589
142.....4589

20 CFR

209.....4364
259.....4365
404.....3937

21 CFR

177.....3938
520.....4718

Proposed Rules:
10.....5048
12.....5048
16.....5048
20.....5048
500.....5048
510.....5048
511.....5048
514.....5048

23 CFR

Proposed Rules:
Ch. I....4744
Ch. II....4744
Ch. III....4744
625....4941

24 CFR

888....4156
905....4282
990....4282
3280....3941

Proposed Rules:
0....3967
570....3970, 3971

26 CFR

1....4719, 4913
20....4250
25....4250
301....4250, 4937

Proposed Rules:
1....4913, 4942
25....4278

27 CFR

Proposed Rules:
9....4942

28 CFR

Proposed Rules:
16....3974

29 CFR

102....4157
1627....4158
2619....5048

Proposed Rules:
1910....4858

30 CFR

Proposed Rules:
795....3975
816....4085
817....4085
870....3975
872....3975
873....3975
874....3975
875....3975
876....3975
886....3975

32 CFR

340....4853
706....4854, 4855, 4938

Proposed Rules:
505....4387
750....4721
756....4735

33 CFR

Proposed Rules:
Ch. I....4744
Ch. IV....4744
165....4366

36 CFR

7....4574

Proposed Rules:
7....4592
62....4592

38 CFR

14....4088
17....4367
19....4088
20....4088

Proposed Rules:
1....3975
19....4131
20....4131

40 CFR

22....4316
51....3941
52....3941, 3946, 4158, 4367
62....4737
180....4368
271....4370, 4371, 4738
272....4161
721....4576

Proposed Rules:
52....3976, 3978
75....4169
80....3980
156....4390
268....4170
300....4824
704....4177
799....4177

41 CFR

101-26....3949
101-38....4373

42 CFR

Proposed Rules:
418....4516
440....4085, 4516
441....4085, 4516
482....4516
483....4516
488....4516

43 CFR

Proposed Rules:
3180....4177

Public Land Orders:
6921....4144
6922....4856

45 CFR

235....5048

46 CFR

515....4578
560....4578
572....4578
580....3950
581....3950
583....3950

Proposed Rules:
Ch. I....4744
Ch. II....4744
Ch. III....4744

47 CFR

64....4373, 4740
69....4856
73....3951, 3952, 4163, 4857

Proposed Rules:
63....4391
73....3982, 4179, 4180, 4859
74....4592
90....4180

48 CFR

211....4741
252....4741
570....4939
1816....4912

Proposed Rules:
31....4181
Ch. 12....4744

49 CFR

571....4086
572....4086

Proposed Rules:
Subtitle A....4744
567....3983
568....3983
571....4594
Ch. I....4744
1141....4594
Ch. II....4744
Ch. III....4744
Ch. IV....4744
Ch. V....4744
Ch. VI....4744

50 CFR

611....3952
625....4248
642....4376
650....4377
672....3960, 4085, 4939
675....3952, 4085

Proposal Rules:
17....4745, 4747, 4912

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.

Public Laws

102d Congress, 2nd Session, 1992

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 2nd Session, 1992.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

S3

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!

To fax your orders (202) 512-2233

____ subscriptions to **PUBLIC LAWS** for the 102d Congress, 2nd Session, 1992 for $119 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

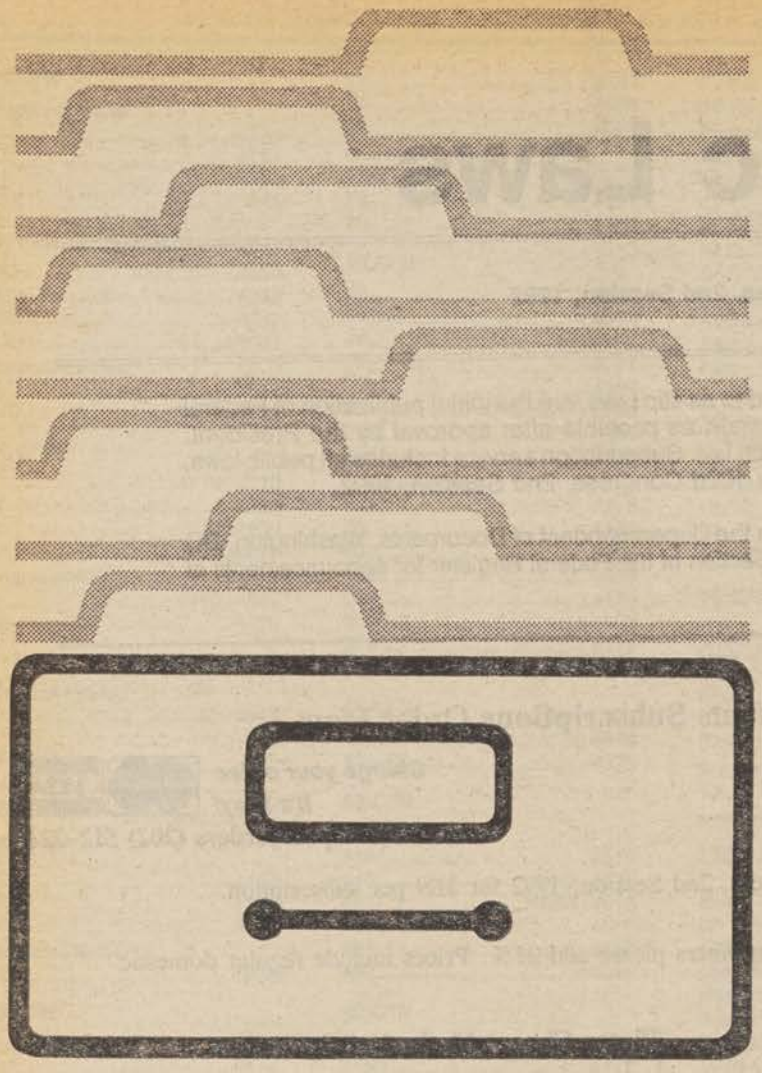
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1/92)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Publications** Order Form

Order Processing Code:
* 6788

P3

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512-2250

☐ **YES**, please send me the following:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069-000-00020-7 at $12.00 each.

_____copies of the 1991 SUPPLEMENT TO THE GUIDE, S/N 069-000-00038-0 at $1.50 each.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

_____
(Company or Personal Name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

_____
(Daytime phone including area code)

_____
(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

_____
(Authorizing Signature) (12/91)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954